

BENCHBOOK JUVENILE JUSTICE

For
Indiana Judges

DELINQUENCY

Sixth Edition 2002

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Prepared by the Juvenile Benchbook Committee of the
Judicial Conference of Indiana

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FOREWORD

The 2002 Delinquency Benchbook has been designed to guide judicial officers through the procedural and substantive maze of the current delinquency law. As has been made evident by the call for a new juvenile code, the present status of the law is often marked with exceptions and nuances that seemingly depart from the benefits of the theoretical application of common law as well as the consistency founded in a uniform code. Thus, the need for a guide is made even more apparent.

The Benchbook provides in outline form the statutory references and case law cites to each step of the delinquency process. As a practical guide, we have prepared a quick reference chart on subject matter jurisdiction for use on the bench. The chart may be a useful tool for probation officers as well.

Of significant note is the fact that Title IV-E reimbursements for placement costs require reasonable efforts findings similar to that which is required in CHINS cases. Suggested reasonable efforts language is included in the proposed forms and a discussion of the requirements for reasonable efforts is noted in the relevant chapters. A chart for reference on the bench has also been created.

As with all general guides, this Benchbook has not been prepared as an authoritative source. Rather its intended purpose is to highlight for the judicial officer and / or the court staff the general application and parameters of delinquency law. Sound practice dictates that each source and recommendation referenced in this Benchbook be carefully considered in the context of the issue at bar and reviewed for current case or statutory changes. The Benchbook has not been reviewed by the Indiana Supreme Court.

The Juvenile Benchbook Committee has met over the course of the past year to develop this publication. The chapters were written by individual judicial officers on the committee. The drafts were then reviewed and critiqued by the committee as a whole. A final review for accuracy of citations was completed just prior to publication. Each committee member has significantly devoted their expertise and their time. Their contribution is appreciated.

This work would not be possible without the aid of the Indiana Judicial Center. The case and statutory law updates prepared each year by Jeff Bercovitz were an important resource. In addition, Anne Jordan spent countless hours reviewing and preparing the final text. The committee is deeply appreciative of their assistance.

As with the law, the Benchbook Committee's publication is a continuing work in progress. We welcome your suggestion and criticisms in that both are needed to maintain a quality product.

Respectfully submitted,

Charles F. Pratt,
Chair
Juvenile Benchbook Committee
December, 2002

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- A. By any law enforcement officer acting under an order of the court of juvenile jurisdiction. IC 31-37-4-1
- B. By any law enforcement officer acting with probable cause to believe the child has committed a delinquent act. IC 31-37-4-2
- C. By an intake officer. See IC 31-37-5-5.

Note: A child may be taken into custody by any law enforcement officer, probation officer, or caseworker acting with probable cause to believe the child is a *child in need of services* under certain emergency circumstances; IC 31-34-2-3, or *the child is a missing child* as defined by IC 10-1-7-2.

II. Procedures for Detention

- A. If taken into custody under court order, the law enforcement officer shall take the child to a place designated in the order to await a detention hearing. IC 31-37-5-2

USE FORM D-1.02 and D-1.03

- B. A child taken into custody without a court order may be released to his parent, guardian or custodian by the law enforcement officer upon written promise to appear, or:

- 1. the child may also be placed in detention by the law enforcement officer or intake officer if such officer reasonably believes that:

- (a) the child is unlikely to appear for subsequent proceedings;
 - (b) the act involved is murder or a Class A or B felony;
 - (c) detention is "essential to protect the child or community";
 - (d) The parent, guardian or custodian cannot be located or is unable or unwilling to take custody; or
 - (e) the child has a reasonable basis for requesting that he not be released.

(IC 31-37-5-3 and IC 31-37-5-5)

NOTE: A child detained for reasons (d) or (e) may not be held in a secure facility, (IC 31-37-7-1) and a runaway may be held in secure detention for only twenty-four (24) hours, excluding Saturdays, Sundays and non-judicial days. For other restrictions and limitations on detention see IC 31-37-7-1 and IC 31-37-23-1 (secure detention of repeat runaways and repeat truants).

2. A child taken into custody and so placed in detention without a court order must have the reasons for his detention investigated by an intake officer [IC 31-37-5-5] and such child must be released to his parent, guardian, or custodian upon such person's written promise to appear, but may also be retained in detention if the intake officer reasonably believes that the child is a delinquent child and any one of the five detention criteria noted above exists. IC 31-37-5-5.
3. If not released, the child shall be delivered to a place designated by the court. The law enforcement officer shall notify the parent, guardian, or custodian and the intake officer of the following:
 - a. Where the child is being held, and
 - b. The reason for the child's detention.
4. A detention hearing must be held in accordance with IC 31-37-6-2.

USE FORM D-1.03

C. A person (prosecutor or attorney for the county office of family and children), contemporaneously with the court's approval of delinquency petition, may request in writing that the child be taken into custody. The request shall be supported by either sworn testimony or an affidavit justifying the request. The request may be granted only if the court makes written findings of fact upon the record that a ground for detention exists under IC 31-37-6-6.

IC 31-37-10-5

1. If detained, a detention hearing must be held in accordance with IC 31-37-6.
- D. For placement in secure or shelter facility and limitations on place of detention, see IC 31-37-7-1.
- E. The issuance of a court order to take a child into custody pursuant to 34-4-9-2.1 for failure to appear in response to summons, subpoena, or notice given in open court.

F. IC 34-4-9-2.1 allows the court to order a body attachment for persons who fail to appear as ordered by the court.

G. A juvenile apprehended upon the authority of such a body attachment shall be taken "to a place designated in the order to await a detention hearing [IC 31-37-5-2]."

USE FORM D-5.03, Request for Custody Order

III. Place of Detention

A. A juvenile apprehended upon the authority of such an order shall be taken to a place designated in the order to await a detention hearing. IC 31-37-5-2.

B. A child alleged to be delinquent may be held in either of the following:

1. A secure facility for not more than 6 hours upon arrest for the limited purposes of :

- a. Identification;
- b. Processing;
- c. Interrogation;
- d. Transfer to a juvenile detention facility; or
- e. Released to parents.

NOTE: If a child is held in a secure facility, the child must be restricted to an area of the facility in which the child has not more than haphazard or incidental sight or sound contact with persons charged with, imprisoned for, or incarcerated for crimes. The Juvenile Benchbook Committee believes that the term "A secure facility" in IC 31-37-7-2 refers to an adult jail and not a secure facility as defined in IC 31-9-2-114.

2. A juvenile detention facility

C. A court may not place a child in a facility outside the child's county of residence if there is a comparable facility with adequate services within the child's county of residence. IC 31-37-7-4

IV. Time Limitations

A. Detention Hearing

1. A child taken into custody and so placed in detention without a court order and so detained by the intake officer is entitled to:

a. a probable cause determination by a judicial officer within forty-eight (48) hours of the time he was taken into custody; and

b. a detention hearing within forty-eight (48) hours (excluding Saturdays, Sundays and legal holidays) after he is taken into custody [IC 31-37-6-2]

B. Detention Hearing-Runaway

1. In the case of a runaway or child leaving home without permission under IC 31-37-2-2, the child may not be held more than twenty four (24) hours. IC 31-37-7-3.

C. Home Detention

1. Home detention does not follow the same rules as secured detention. See IC 31-37-2(c), which was adopted after **State of Indiana v. Marion County Superior Court Juvenile Division**, 704 N.E.2d 477 (Ind. 1998)

D. Fact Finding or Waiver Hearing

1. If a child is in detention a petition alleging delinquency must be filed within 7 days. IC 31-37-11-1. A fact finding hearing or waiver hearing must be commenced within 20 days. IC 31-37-11-2

E. Temporary Detention:

1. A delinquent under IC 31-37-7-2 may be held in a secure facility for no more than six (6) hours upon arrest for purposes of identification, processing, interrogation, transfer or release to parents. There are specific requirements as to the holding area. IC 31-37-7-2

F. Release:

1. If a detention hearing is not timely held, the juvenile is entitled to be released from detention, but the juvenile court does not lose jurisdiction and juvenile is not entitled to dismissal or discharge.

V. Detention hearing

A. Parent, Guardian, or Custodian notification

1. A child taken into custody without such a court order and so placed in detention by the law enforcement officer must be taken to a place designated by the court [IC 31-37-5-4]. The child's parent, guardian, or custodian and an intake officer must immediately be notified:

- (1) that the child is in detention;
- (2) where the child is being held; and
- (3) the reasons for the detention.

NOTE: The notification to the parents does not have to be in writing.

2. Notification of hearing

- a. The notice of the time, place and purpose of the detention hearing shall be given to the child and his parent, guardian, or custodian if the parent, guardian, or custodian can be located.

USE FORM D-1.04

B. Requirements of hearing

1. Rights: At the hearing the child and his parent, guardian, or custodian. shall be informed of the child's right to counsel and to refrain from testifying against himself and the court may appoint counsel under IC 31-37-6-5.

2. To continue detention, the court must find probable cause to believe the child is a delinquent child, and

- (a) the child is unlikely to appear for subsequent proceedings;
- (b) detention is essential to protect the child or community;
- (c) The parent, guardian or custodian cannot be located or is unable or unwilling to take custody of the child; or
- (d) the child has a reasonable basis for requesting that he not be released.
- (e) that continuation in the home would be contrary to the best interests and welfare of the child because

-
- (f) Reasonable efforts have been made/or an emergency exists such that reasonable efforts could not be made to prevent placement.

IC 31-37-6-6

3. Additional hearings may be had upon the motion of the Court or an interested party. IC 31-37-6-7 and IC 31-37-6-8

4. A child may not be released on bail except as provided by IC 31-30-1

5. The Court can require the surrender of the juvenile's driver's license as a condition of release to ensure appearance at subsequent proceedings. IC 31-37-6-10.

See also: Pre-adjudication suspension of license, IC 31-37-5-7

6. Legal Settlement for school purposes: The juvenile court shall make a finding of legal settlement of the child in a dispositional order, modification order or

other decree when the court places a child or changes the placement of a child. This affects transfer tuition fees. IC 31-37-19-26; IC 20-8.1-6.1-1 [Legal Settlement]. The juvenile court shall, within ten days of placement, comply with the reporting requirements under IC 20-8.1-6.1-5.5 concerning the legal settlement of the child.

7. Reimbursement. The Court is required to consider ordering parents to pay for services [including detention costs] provided to the child or the parent or guardian, unless the Court finds that the parent or guardian is unable to pay, or that justice would not be served by ordering payment. IC 31-40-1-3.

USE FORM D-1.07

USE FORM D-1.08

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Juvenile

WRITTEN PROMISE FOR APPEARANCE OF JUVENILE

I, the child, parent (or the guardian or custodian of the above named child) do promise to appear (and bring the child) to the Juvenile Court when requested to do so by _____

or in response to lawful process.

Dated: _____

Parent

Address

I hereby release the child, _____, to the custody of his parents or other persons _____, upon the condition that the child and his parent, guardian or custodian appear in person in the Juvenile Court at a time to be later specified and upon the further following conditions:

Dated: _____

Detaining Officer or Intake Officer

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

TO: _____

NOTICE OF DETENTION OF CHILD

You, as the parent, guardian, custodian or intake officer are hereby notified that the child , _____, age _____, and residing at _____, has been placed in detention at _____ by the _____ police department because there is probable cause to believe that said child has committed a delinquent act and one or more of the following conditions contained in IC 31-37-5-3 - as marked by an "x" - exists with respect to said child:

- () the child is unlikely to appear for subsequent proceedings;
- () the act involved is murder or a Class A or Class B felony;
- () detention is "essential to protect the child or the community";
- () the parent, etc. cannot be located or is unwilling or unable to take custody; or
- () the child has a reasonable basis for not requesting he or she not be released.

Please contact _____ at _____ (telephone) for further information.

Detaining Officer or Intake Officer

Dated: _____
Time: _____

Address: _____
Phone: _____

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

NOTICE OF DETENTION HEARING

The State of Indiana to _____
 (a child under the age of eighteen years)
 (the parent, guardian or custodian of the child)

You are hereby commanded to appear personally before the Judge of the _____
 _____ Court at the Court House, Room _____ in _____
 _____, Indiana on the ____ day of _____, 20__ at _____
 o'clock __.M. for a Detention Hearing. The purpose of the Detention Hearing is to determine if said
 child should remain in detention or be released from detention, and if release is ordered, upon what
 condition.

If you fail to appear as above commanded, without reasonable cause, you may be considered
 to be in contempt of court and an attachment for your person may be issued by the court.

Dated this ____ day of _____, 20__.

 Signature

 Title

STATE OF INDIANA

____ COURT

In the Matter of:)

)

)

AFFIDAVIT, FINDINGS AND 48 HOURORDER REGARDING PROBABLE CAUSE____,)
A Child Alleged to be a Delinquent Juvenile

Age: _____ (D/O/B: _____)

AFFIDAVIT IN SUPPORT OF PROBABLE CAUSE

The undersigned Probation Officer on the day and date below represents as follows:

1. That as an Intake Officer and pursuant to IC 31-37-4-1 the officer has investigated the reasons for said child's current detention and reasonably believes that said child is a delinquent child under Indiana law.

2. That the following information regarding the circumstances of said juvenile's arrest and detention was furnished to the undersigned during the course of his investigation:

a. Time of arrest (24 hour local time): _____

b. Date of arrest: _____

c. Arrest agency/officer: _____

d. Place of detention at time or review by Intake Officer:

() Detention Center: _____

() Other: _____

() Reasonable efforts as to services made prior to the removal of the child:

3. That the undersigned reasonably believes that the information summarized in paragraph (4.) below establishes probable cause to believe that said child committed the indicated offense or offenses:

- a. () Runaway offense contrary to IC 31-37-2-2
- b. () Truancy offense contrary to IC 31-37-2-3;
- c. () Ungovernable offense contrary to IC 31-37-2-4
- d. () Curfew offense contrary to IC 31-37-2-5;
- e. () Alcoholic beverage offense contrary to IC 31-37-2-6);
- f. () Criminal acts contrary to IC 31-37-1-2:

<u>Count:</u>	<u>Specific Offense/Class</u>	<u>Statutory Cite</u>
---------------	-------------------------------	-----------------------

1)

2)

3)

4)

4. That the undersigned reasonably believes that the following information establishes probable cause to believe that said child committed the offense or offenses indicated above in paragraph (3.) of this Affidavit:

SECURE DETENTION OPTION

5. That in addition, the officer reasonably believes that said child should be detained in secure detention at the _____ Detention Center for one or more of the following reasons:

- () Said child has committed an act which would be murder or a Class A or Class B Felony if committed by an adult;
- () Detention is essential to protect said child;
- () Detention is essential to protect the community;

-OR-

NON-SECURE DETENTION OPTION

6. That in addition, the officer reasonably believes that said child should be detained in non-secure detention at _____ for one or more of the following reasons:

- () The parent, guardian or custodian of said child cannot be located or is unable or unwilling to take custody of said child; or
- () Said child has a reasonable basis for requesting that he or she not be released.

7. What reasonable efforts were made to prevent removal:

8. Issues of safety preclude immediate use of services to prevent removal because:

9. Continuation in the home is contrary to the welfare and placement is in the best interests of the child because:

I affirm under the penalties of perjury that the following representations are true to the best of my knowledge and belief on this ____ day of _____, 20 __,

Signature

Printed

Address and Phone Number of juvenile probation officer

STATE OF INDIANA

COURT

In The Matter of:

)

) WRITTEN FINDINGS) RECOMMENDATIONS AND 48 HOUR,) ORDER REGARDING PROBABLE CAUSE

A Child Alleged to be a Delinquent Child)

Age: _____ (D/O/B): _____)

Based upon information received and affirmed under the penalties of perjury from, _____,
 _____, on this _____ day of _____,
 20 ____ at _____.M. The Court now FINDS as follows:

1. That with regard to such detention the following information is true:

- a. Time of arrest (24 hour local time): _____
- b. Date of arrest: _____
- c. Arresting agency/officer: _____
- d. Place of detention: _____

2. That based upon the information provided, the Court:

- () FINDS no probable cause to exist for any offense and that said child should be released to the custody of child's parent, guardian or custodian or the child's own recognizance.
- () FINDS probable cause to believe that said child committed the following offense or offenses:
 - a. () Runaway offense contrary to IC 31-37-2-2
 - b. () Truancy offense contrary to IC 31-37-2-3;
 - c. () Ungovernable offense contrary to IC 31-37-2-4
 - d. () Curfew offense contrary to IC 31-37-2-5;
 - e. () Alcoholic beverage offense contrary to IC 31-37-2-6);
 - f. () Criminal acts contrary to IC 31-37-1-2:

Count: Specific Offense/Class Statutory Cite

- 1)
- 2)
- 3)
- 4)

3. That said juvenile should be continued in secure custody at: _____

_____ and that a detention hearing should be held pursuant to IC 31-37-6 on _____
_____, 20__ at _____.M. or as soon thereafter as the matter may be
heard by the Court and that such Intake Officer should notify said juvenile and said
juvenile's parent, guardian or custodian of same.

Judge/Referee/Magistrate
_____ Court

The above FINDINGS of the Referee/Magistrate are approved and adopted as the
FINDINGS and ORDER of the Court on the date file marked hereon.

Judge _____ Court

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER ON DETENTION HEARING

_____ was produced before the Court for a
(child's name)
Detention Hearing this ____ day of _____, 20 ____.

Actual notice of the time, place and purpose of Detention Hearing has been given to the
child and _____,
(parent) (guardian) (custodian)
or _____ cannot be located and notice
(parent) (guardian) (custodian)
has been given to the child and child's _____,
(parent) (guardian) (custodian)
of the child's right to counsel and right against self-incrimination.

Present at the hearing are: _____.

Detention Hearing is now held.

- () The Court now finds that probable cause exists to believe that said child is a delinquent child and that said child be detained because:
- () the child is unlikely to appear for subsequent proceedings;
 - () detention is essential to protect the child or the community;
 - () the parent, guardian, or custodian cannot be located or is unable or unwilling to take custody of the child; or
 - () the child has a reasonable basis for requesting that he not be released and in support thereof the Court finds:

- () The Court finds that reasonable efforts to prevent the need for removal were made

consisting of the following:

- () _____
Issues of safety preclude immediate use of services to prevent removal because: _____

The Court orders that said child be detained in the following placement until further order by the Court: _____.

Said placement is the least restrictive placement in the child's best interest. It is contrary to the welfare of the child for the child to remain in the home.

-OR-

- () The Court now finds that probable cause exists to believe that said child is a delinquent child but that said child is not in need of further detention, and accordingly, orders that said child be released to _____.

(parent) (guardian) (custodian)

upon the latter's written promise to bring the child before the Court on the ____ day of _____, 20__ at _____ o'clock ____ M. and from day to day thereafter as hereinafter ordered by the Court.

- () The Court now finds that probable cause does not exist to believe that said child is a delinquent child and orders said child released to the custody of _____.

(parent) (guardian) (custodian)

The Court now finds as follows:

The legal settlement of the child is _____. The _____ County Office of Family and Children shall provide notice required by IC 20-8.1-6.1-5.5.

- () Pursuant to IC 31-40-1-3 the child's _____ (Parents, Guardian of child's estate) shall pay for services provided to the child or the parents or guardian, as follows: _____

-OR-

- () Pursuant to IC 31-40-1-3(c), the Court finds, that at the present time, the parents of the child are unable to pay, or that justice would not be served by ordering payment;

Ordered this _____ day of _____, 20 ____.

Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

PETITION FOR DETENTION HEARING

I, _____, do request that the above named
(child) (parent) (custodian)

child be granted a prompt hearing to determine if said child should be released from detention.

Dated: _____

Petitioner

ORDER

The Court having examined Petition for Detention Hearing, now (grants) (denies) said
Petition, and sets the Cause for hearing on

_____ at _____ at _____
(date) (time) (place)

SO ORDERED this ____ day of _____, 20__.

Judge

IN THE STATE OF INDIANA
 _____ COURT

IN THE MATTER OF _____

_____ Case No. _____
 A Child Alleged To Be A Delinquent Child

WRIT OF ATTACHMENT FOR FAILURE TO APPEAR

THE SHERIFF OF _____, INDIANA IS ORDERED AND
 COMMANDED TO ATTACH:

Child's Name:

Address:

Parent/Guardian:

Sex: _____ Race: _____ Height: _____ Weight: _____ Hair: _____
 Features: _____ Birth date: _____ S.S.#: _____

(Identifying Information Provided By: Probation Department)

These FINDINGS were made on (_____) (the date file marked hereon) by the
 JUDGE (Referee) and the JUDGE (Referee) ORDERS (Recommends) that they be adopted as
 the FINDINGS and ORDER of the Court:

1. The Court on said date conducted a hearing on _____.
2. Proof was given to the Court of:
 - () Service of Summons for hearing this date.
 - () Service of a Subpoena for hearing this date.
 - () Said person's presence in Court when further hearing was continued to this date.
3. Said person failed to appear personally or by counsel and is in default.
4. Such failure to appear merits the issuance of a Body Attachment returnable:

- () To _____ Detention Center.
- () To the place designated by the court: _____
(If such person is age eighteen (18) or older.)

Judge (Referee)

Court

The Court having considered said FINDINGS and Recommendations of the Referee, the Court now approves the same and adopts them as the FINDINGS and ORDER of the Court on (Said date) (the day and date file marked hereon).

DATED: _____

Judge

DETENTION REPORT TO COURT
DELINQUENT CHILDREN
(Optional Form to be Used by Arresting Officer)

GENERAL INFORMATION

1.

Full Name of Child	Sex	Race	Age	Birth Date
--------------------	-----	------	-----	------------
2.

Address	Res. Phone	Grade	School
---------	------------	-------	--------
3.

Father	Address	Phone
--------	---------	-------
4.

Mother	Address	Phone
--------	---------	-------
5.

Custodian, Guardian	Address	Phone	Relationship
---------------------	---------	-------	--------------

The undersigned alleges there is probable cause to believe said child has committed a delinquent act and is a delinquent child and one or more of the conditions contained in IC 31-37-6-6 as marked by an "x" - exists with respect to said child:

- ☐ the child is unlikely to appear for subsequent proceedings;
- ☐ the act involved is murder or a Class A or Class B felony;
- ☐ detention is "essential to protect the child or the community";
- ☐ the parent, etc. cannot be located or is unwilling to take custody; or
- ☐ the child has a reasonable basis for not requesting release.

6.

Place of Detention	Date of Placement in Shelter Care	Time
--------------------	-----------------------------------	------

INFORMATION REGARDING DELINQUENT ACT

Describe in Detail (Attach report if needed.)

Date and Place of Delinquent Act

Others involved

Witnesses	Address	Phone
-----------	---------	-------

Complainant's Name	Address	Phone
--------------------	---------	-------

Parents Contacted and/or Notified By	Date	Time
--------------------------------------	------	------

Released to Parents or Others	Date	Time
-------------------------------	------	------

Placed in Custody of Intake Officer of Detention Facility	Date	Time
--	------	------

Detaining Officer	I.D. No.	Signature	Date
-------------------	----------	-----------	------

SUBJECT MATTER JURISDICTION

I. EXCLUSIVE ORIGINAL JURISDICTION [I.C. 31-30-1-1]

A. Delinquency Proceedings

Except as set forth under Section II, and Section III, the juvenile court has exclusive original jurisdiction over proceedings in which the child, including a child of divorced parents, is alleged to be delinquent under I.C. 31-37. Generally the juvenile court has exclusive original jurisdiction over:

1. Offenses that would be a crime if committed by an adult except as excluded under I.C.31-30-1 (see below).
2. Status Offenses:
 - a. Leaving home (I.C.31-37-2-2),
 - b. Failure to Attend School (31-37-2-3),
 - c. Disobedience(31-37-2-4),
 - d. Curfew Violation (I.C.31-37-2-5), and
 - e. Alcoholic Beverage Offenses under I.C. 71.-5-7 (I.C.31-37-2-6).
3. Acts by a child who is less than age sixteen (16) years of age that would be misdemeanor traffic offenses if committed by an adult. [I.C.31-30-1-1(8)].
4. Acts by a child that would be the offense of operating a vehicle while intoxicated under I.C.9-30-5 if committed by an adult. [I.C.31-30-1-1(9)]

B. Jurisdiction Over Other Types of Proceedings Related to Delinquency [I.C.31-30-1-1]

The juvenile court has exclusive original jurisdiction in the following proceedings related to delinquency:

1. Child in need of services (CHINS) proceedings under I.C. 31-34.
2. Interstate compact on juveniles under I.C. 31-37-23.
3. Orders for participation of a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for a child under I.C. 31-34-16 (delinquency) and I.C. 31-37-15 (CHINS). [NOTE: Separate petition required, see Section IV below.]
4. Detention of a child under I.C. 31-37-5 and I.C.31-37-6 before a delinquency petition has been filed.
5. Protective order (no contact order) under I.C.31-32-13-1.

C. Age as Subject Matter Jurisdiction.

1. Age of person at time of commission of delinquent act or status offense determines jurisdiction.
2. A child is a delinquent child if, before becoming age eighteen (18) years of age, the child commits a delinquent act described in I.C.-31-37.
3. Age is subject matter jurisdiction in juvenile court only.
 - a. Petition alleging delinquency set forth the child's date of birth. Although state did not present evidence on the child's age, neither did the juvenile challenge the petition on that basis. Age is an issue of subject matter jurisdiction in juvenile court. However, the juvenile's failure to factually challenge the petition precluded reversal on appeal. **K.D. v. State** 754 N.E.2d 36 (Ind. App.2001)
 - b. Age determines juvenile court's subject matter jurisdiction but only affects a criminal court's personal jurisdiction. Thus, if a non-juvenile misrepresents his

age and pleads guilty to a criminal charge without the court's knowledge, his conviction is valid and may not be attacked for lack of subject matter jurisdiction through a petition for post-conviction relief.

Twyman v. State, 459 N.E.2d 705 (Ind. 1983)

II. CONCURRENT JURISDICTION [I.C. 31-30-1-1 and I.C. 31-30-1-3]

A. Extradition: Adult Felony Court has Concurrent Jurisdiction with Juvenile Court [I.C.31-30-1-9]

If there is probable cause to believe that a child has committed an act that would be murder or a felony if committed by an adult, and the child has left Indiana and the state cannot obtain jurisdiction over the child in any other lawful manner except under the proceedings authorized for the extradition of alleged felons, the adult felony court has concurrent jurisdiction with the juvenile court for such purpose. Upon return of any child under the criminal extradition law, the court having felony jurisdiction shall immediately transfer the child to the juvenile court transfer the child according to the provisions of I.C. 31-30-1-11.

B. Child Custody Cases in Dissolution and Paternity cases. [I.C.31-30-1-12 and 13]

1. The court(s) having jurisdiction under I.C. 31-17-2 (child custody in a marriage dissolution) or under I.C. 31-14 (paternity custody actions) has concurrent original jurisdiction with the juvenile or with another juvenile court for the purposes of modifying custody of a child who is under jurisdiction of the juvenile court or other juvenile court because the child is the subject of a CHINS proceeding or a delinquency proceeding other than a proceeding that involves an act described under I.C. 31-37-1-2 (I.C. 31-37-1-2 refers to offenses that would be a crime if committed by an adult, as opposed to status delinquency).
2. If the court in the paternity or dissolution proceeding modifies custody, the modification is only effective when the court with juvenile jurisdiction over the CHINS or delinquency proceeding enters an order approving the modification or terminates the CHINS or delinquency proceeding. (I.C.31-30-1-12 (b) and I.C.31-30-1-13 (b))

C. Concurrent Original Jurisdiction in Cases Involving Adults [I.C.31-30-1-3]

The juvenile court has concurrent original jurisdiction in cases involving adults charged with the crime of:

1. neglect of a dependent (I.C.35-46-1-4)
2. contributing to delinquency (I.C.35-46-1-8)
3. violating the compulsory school attendance law (I.C. 20-8.1-3)
4. criminal confinement of child (I.C.31-42-3-3)
5. interference with custody (I.C.35-42-3-4)

D. Commitments of Children and Termination of Parental Rights: Juvenile Court has Concurrent Original Jurisdiction with Probate Court [I.C. 31-30-1-5]

Juvenile court has concurrent original jurisdiction with the probate court limited to the provisions in I.C.12-26-1-4 in proceedings to:

1. Commit children under I.C.12-26.
2. To terminate the parent-child relationship under I.C.31-35.

E. Water Recreation: Concurrent Original Jurisdiction [I.C.31-30-1-7]

Juvenile court has concurrent original jurisdiction in cases involving individuals subject to prosecution under I.C. 14-15-10-3:

“A person at least sixteen (16) years of age and less than eighteen (18) years of age who violates this article [regulation of Water recreation] may be prosecuted and tried in a court having jurisdiction over adults who violate this article.”

III. EXCLUDED FROM JURISDICTION [I.C.31-30-1-4]

A. Excluded Crimes Other than Involving Controlled Substances [I.C.31-30-1-4 (a)]

The following crimes are excluded from excluded from juvenile jurisdiction if committed by an individual who was at least sixteen (16) years of age at the time of the alleged violation:

- (1) I.C. 35-42-1-1 (murder);
- (2) I.C. 35-42-3-2 (kidnapping);
- (3) I.C. 35-42-4-1 (rape);
- (4) I.C. 35-42-4-2 (criminal deviate conduct);
- (5) I.C. 35-42-5-1 (robbery), if:
 - (a) it was committed while armed with a deadly weapon; or
 - (b) it results in bodily injury or serious bodily injury;
- (6) I.C. 35-42-5-2 (car jacking);
- (7) I.C. 35-45-9-3 (criminal gang activity);
- (8) I.C. 35-45-9-4 (criminal gang intimidation);
- (9) I.C. 35-47-2-1 (carrying a handgun without a license);
- (10) I.C. 35-47-10 (children and firearms);
- (11) I.C. 35-47-5-4.1 (dealing in a sawed-off shotgun);
- (12) Any offense that may be joined [under I.C. 35-34-1-9(a)(2)] with the crime listed in subdivisions (1) through (11).

B. Excluded Controlled Substance Related Offenses [I.C.31-30-1-4 (b)]

If the individual was at least sixteen (16) years of age at the time of the alleged violation and

1. Has a prior unrelated conviction under I.C. 35-48-4-1 (manufacturing or dealing in cocaine, a narcotic drug, or methamphetamine), I.C.35-48-4-2 (dealing in a schedule I, II, or II controlled substance), or I.C.35-48-4-3 (dealing in a schedule IV controlled substance); or
2. the individual has a prior unrelated juvenile adjudication that, if committed by an adult, would be a crime under I.C.35-48-4-1, I.C.35-48-4-2, or I.C.35-48-4-3,

then the following crimes are excluded from juvenile court jurisdiction:

- (a) I.C. 35-48-4-1 (manufacturing or dealing in cocaine, a narcotic drug, or methamphetamine);
- (b) I.C. 35-48-4-2 (dealing in a schedule I, II, or II controlled substance);
- (c) I.C. 35-48-4-3 (dealing in a schedule IV controlled substance).

C. Lesser Included Offenses

I.C. 31-30-1-4(c) provides that, “Once an individual described in subsection (a) has been charged with any crime listed in subsection (a)(1) through (a) (15), the court having adult

criminal jurisdiction shall retain jurisdiction over the case even if the individual pleads guilty to or is convicted of a lesser included offense. A plea of guilty to a conviction of a lesser included offense does not vest jurisdiction in the juvenile court.”

NOTE: Prior to the 2001 amendment, the controlled substance offenses were listed with the other excluded offenses. A list of fifteen (15) excluded offenses were thus included in one subsection of the statute. The 2001 amendment separated the controlled substance offenses and added the conditional provisions noted above in Benchbook Subsection III-B (above). The amended I.C.31-30-4(a) now only lists twelve (12) excluded offenses not fifteen (15). It is unclear, therefore, whether the provision retaining convictions of lesser included offenses to the court having adult criminal jurisdiction continues to apply to controlled substance offenses.

D. Excluded Misdemeanor and Infractions [I.C.31-30-1-2]

Except as provided in I.C.33-29.5-4, I.C.33-5-35.1-4 and I.C.31-30-1-8, the juvenile law does not apply to:

- (1) A child who at least sixteen (16) years of age who allegedly committed a violation of a traffic law misdemeanor unless the violation is an offense under I.C.9-30-5 (Operating a Vehicle While Intoxicated).
- (2) A child alleged to have committed an infraction except under I.C.7.1-5-7 (Minors and Alcohol)
- (3) Ordinance violations.

E. A Child Who Has Been Previously Waived [I.C. 31-30-1-2(4)]

The juvenile law does not apply to a child who is alleged to have committed an act that would be a crime if committed by an adult and has been previously waived under I.C.31-30-3 to a court having misdemeanor or felony jurisdiction.

IV. HOW JURISDICTION IS OBTAINED

A. Jurisdiction over Juvenile

1. Under case law, certain steps have always been considered necessary to obtain juvenile jurisdiction. The question usually is raised on review following a waiver of juvenile jurisdiction to a criminal court. The Benchbook Committee believes that five essential elements are necessary under the Juvenile Code to obtain juvenile jurisdiction in a delinquency proceeding. These five essential elements are:
 - a. Written intake information;
 - b. Prosecutor’s request for preliminary inquiry;
 - c. Written report of preliminary inquiry;
 - d. The delinquency petition;
 - e. The order of the juvenile court approving the filing of the delinquency petition.

[NOTE: This referral procedure may be altered by agreement of the prosecutor and the court. I.C. 31-37-8-1 through 6; I.C. 31-37-10-1 through 8.]

2. If the statutory steps are not followed in acquiring jurisdiction over a juvenile, the waiver of the juvenile may be challenged. [**Summers v. State**, (1967), 248 Ind. 551, 230 NE 2d 320 and **Taylor v. State**, 438 NE2d 275 (Ind. 1982)] *But see:* A juvenile court’s jurisdiction over a juvenile for a delinquency adjudication for illegal

consumption established jurisdiction for purposes of another delinquency charge and subsequent waiver of that second charge to adult court. The procedural requirements of I.C. 31-37-8-1 through 6, which require the intake officer to complete a preliminary inquiry, send this report to the prosecutor, and have the prosecutor decide whether to file a petition based thereon and issue a summons to the parents, are not required. **S.W.E. v. State**, 563 N.E.2d 1318 (Ind. App., 1990).

B. Jurisdiction over Parent, Guardian or Custodian for Parent Participation Plan

“Without the filing of a proper verified parental participation petition, a juvenile court does not have jurisdictional authority over a parent and may not order parental action.”

A.E.B. v. State, 756 NE2d 536 (Ind. App. 2001) citing **Mikel v. Elkhart County Department of Public Welfare**, 622 NE2d 225 (Ind.Ct.App.1993)

C. One Year Aggregate limit.

A child may not be required to answer a petition alleging the child to be a delinquent child for more than one (1) year in aggregate. [I.C.31-37-11-5]

V. CONTINUING JURISDICTION AND REINSTATEMENT OF JURISDICTION

A. Jurisdiction Continues to Age Twenty-one Years of Age [I.C.31-30-2-1]

The Juvenile Court has jurisdiction over a delinquent child and over the child’s parent, guardian, or custodian until the child becomes twenty-one (21) years of age unless:

1. The court discharges the child and the child’s parent, guardian, or custodian at an earlier time.
2. The department of correction is awarded guardianship unless reinstated as described below. (Note: the DOC must give ten (10) days notice of child’s release to the court. I.C.31-30-2-2).
3. Guardianship over the person of the child under I.C.31-30-1-1(10) has been ordered and the child is eighteen years (18) of age or until nineteen (19) years of age if the child is a full time student in a secondary school or the equivalent level of a vocational or technical training school. [I.C.31-30-2-1(d)]

B. Continuing Jurisdiction For Payment of Financial Obligation [I.C.31-30-2-2(c)]

The juvenile court’s jurisdiction continues over a parent or guardian of the estate of a child until the parent or guardian of the estate has satisfied the financial obligation of the parent or guardian of the estate imposed under I.C.31-40.

C. Reinstatement of Jurisdiction

The juvenile court may reinstate jurisdiction:

1. Within thirty (30) days of notification of release from the department of correction under I.C. 31-30-2-2, a juvenile court, on its own motion, may reinstate jurisdiction of the child for the purpose of modifying the court’s original dispositional decree under I.C.31-34-23 or I.C.31-37-22.
2. The department of correction may petition the court to reinstate the court’s jurisdiction over the child and the child’s parent, guardian or custodian to modify the court’s decree under I.C. 31-34-23 or I.C.31-37-22 or order the child’s parent, guardian, or custodian to participate in programs operated by or through the department of correction. [I.C. 31-30-2-4]

3. If any part of an order for restitution remains unpaid at the time of the child's release by the department of correction, the court may reinstate jurisdiction over the child and place the child under the supervision of the probation department until the restitution order is satisfied. [I.C.31-30-2-5]

JUVENILE COURT JURISDICTION CHART – NOVEMBER 1, 2002

2.02

Age at time of offense	TYPE OF OFFENSE					
	STATUS	ALCOHOL	DRUG	GUNS	MISDEMEANOR	FELONY
Under 18 years (that is prior to 18 th birthday) at time of offense. <u>Date of offense controls.</u>	Juvenile Court has exclusive original jurisdiction over <u>all</u> status offenses Note: I.C. 7.1-5-7 alcohol offenses are not crime delinquency but status offenses.	Exclusive Original Jurisdiction Alcohol offenses under I.C.7.1-5-7 (For example – Minor Consuming) Operating While Intoxicated I.C.9-30-5 See also I.C. 31-30-1	SOME ARE EXCLUDED SEE BELOW	SOME ARE EXCLUDED SEE BELOW	SOME ARE EXCLUDED SEE BELOW	SOME ARE EXCLUDED SEE BELOW
<u>Less</u> than 16 years of age at time of offense	ALL STATUS IN JUVENILE COURT	(SEE ABOVE)	ALL INCLUDED	ALL INCLUDED	All in Juvenile Ct. Jurisdiction including TRAFFIC MISDEMEANORS (15yrs & younger)	ALL FELONIES
<u>16 years or over</u> at time of offense	INCLUDED	INCLUDED	If a prior conviction or unrelated adjudication under IC 35-48-4-1, IC 35-48-4-2, or IC 35-48-4-3; Then IC35-48-4-1 (Cocaine), IC35-48-4-2 (Schedule I,II,III Offense), or IC 35-48-4-3 (Schedule IV) ARE EXCLUDED As well as offenses that can be joined	Carrying handgun w/o license (IC35-47-2-1) Children and Firearms (IC35-47-10) Sawed Off Shotgun (IC35-47-5-4.1) ARE EXCLUDED As well as offenses that can be joined See IC-31-30-4 + lesser included	<u>Unless</u> the offense is under the chapter dealing with operating a vehicle while intoxicated (IC 9-30-1), THE TRAFFIC MISDEMEANOR IS EXCLUDED FROM JUVENILE COURT	EXCLUDED: Murder (IC35-42-1-1) Kidnapping (IC35-42-3-2) Rape (IC35-42-41-) Criminal deviant conduct(35-42-5-1) Robbery with weapon or bodily injury (IC35-42-5-1) Carjacking (IC35-42-5-2) Criminal gangs (IC35-45-9-3 &4) Plus Joined Offenses and lesser included.

JUVENILE LAW DOES NOT APPLY TO ORDINANCE VIOLATIONS AND INFRACTIONS
ONCE WAIVED THE JUVENILE IS ALWAYS WAIVED SEE I.C.31-30-3 (but note recent case law)

**WRITTEN INTAKE INFORMATION,
PRELIMINARY INQUIRY AND REPORT**

I. Receipt of intake information.

- A. Any person may give an intake officer or prosecutor written information indicating a child is a delinquent child. IC 31-37-8-1(a). If the information is given to the intake officer, he shall immediately forward the information to the prosecutor. USE FORM D-3.02 unless sufficient written report has been received from a police department or other referral agency. FORM D-3.02 should be used for citizen referrals, as well as any instance where a written police or agency report is either unavailable or deemed insufficient. The Benchbook Committee believes the written information referred to in IC 31-37-8-1(a) should be called "Intake Information." The statute does not require it to be verified, but it should be signed by the person giving same, or by someone on behalf of the referring agency.
- B. Under existing case law the written intake information is an essential document to acquisition of juvenile jurisdiction and it, together with the report of preliminary inquiry, should be filed with the Court and made a part of the record at the time the delinquency petition is filed. **Taylor v. State**, 438 N.E.2d 275 (Ind.1982), *cert denied*, 459 U.S. 1149, 103 S. Ct. 793 (1983).

II. Preliminary inquiry and report.

- A. If the prosecutor has reason to believe the child has committed a delinquent act, he shall instruct the intake officer to make a preliminary inquiry to determine whether the interests of the public or the child require further action. IC 31-37-8-1(c). A preliminary inquiry is an informational investigation into the facts and circumstances reported to the court. Whenever practicable, it should include information on the child's background, current status, and school performance. IC 31-37-8-2.
- B. If a parent, guardian or custodian of a child seeks information concerning a preliminary inquiry, he shall be notified whether a preliminary inquiry is being made and, if so, the nature of the inquiry. IC 31-37-8-3.
- C. In the event of a child interview, the intake officer shall advise the child and his parent, guardian or custodian of the following:
 - 1. The nature of the allegation against the child;
 - 2. That he is conducting a preliminary inquiry to assist the prosecutor in determining whether a petition should be filed alleging that the child is a delinquent child;

3. That he will recommend whether to file a petition, informally adjust the case, refer the child to another agency, or dismiss the case; and
4. That the child has a right to remain silent; that anything he says may be used against him in subsequent judicial proceedings; that the child has a right to consult with an attorney before he talks with the intake officer and that the child has a right to stop at any time and consult with an attorney; that the child has a right to stop talking with the intake officer at any time; and, that if the child cannot afford an attorney, the court will appoint one for him. IC 31-37-8-4.

USE FORM D-3.03.

NOTE: An intake officer is not always required to conduct a child interview in preparing the preliminary inquiry. If a child interview is conducted, consider having the intake officer advise the parents of their rights and obligations under IC 31-37-12-6. See Form D-3.03.

- D. If a child is in detention, only seven (7) (excluding Saturdays, Sundays, and legal holidays) days are allowed for filing of a formal petition after the child is taken into custody. It is recommended that the intake officer attempt to contact the parent and child in person or by telephone as needed to timely complete the investigation and report. USE FORM D-3.04 for consent to background investigation and release.
- E. The intake officer shall send the prosecutor a copy of the preliminary inquiry in all cases involving allegations that the child committed an act that would be a crime if committed by an adult. The intake officer shall send to the prosecutor or the attorney for the county department a copy of the preliminary inquiry in all cases involving allegations that the child committed a delinquent act that would be a crime if committed by an adult. He shall recommend whether to file a petition, informally adjust the case, refer the child to another agency, or dismiss the case. This referral procedure may be altered by agreement of the prosecutor and the court.
IC 31-37-8-5.

USE STANDARD PRELIMINARY INQUIRY/PREDISPOSITION REPORT for report of preliminary inquiry. [Promulgated by the Judicial Conference of Indiana.] See form D-3.05.

- F. If the probation officer believes that a restrictive placement will be made, the members of the local coordinating committee may be alerted according to IC 31-38-2-1.

STATE OF INDIANA

COURT

In The Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**INTAKE INFORMATION FOR A DELINQUENT CHILD
AND PROSECUTOR'S REQUEST FOR PRELIMINARY INQUIRY**
IC 31-37-8-1

To the Prosecutor or Intake Officer of the _____ Court:

The undersigned hereby informs the Court that:

Name	Age	Birth date	Sex
------	-----	------------	-----

whose parents are: Father _____ Address _____

Mother _____ Address _____

or whose guardian or custodian is _____

Address _____
and who is now residing with _____ is a delinquent child in that:

The undersigned requests that the Intake Officer of said Court make a preliminary inquiry to determine whether the interests of the public or of the child require further action.

Dated: _____

Signature _____

Official Title, if any

Witness to signature: (Optional)

Address

Please check if applicable:

☐ Restrictive placement may be considered.

Having reason to believe that said child has committed a delinquent act, the undersigned Deputy/Prosecutor instructs the Intake Officer for said Court to make a preliminary inquiry to determine whether the interests of the public or of the child require further action.

Dated: _____

Deputy/Prosecutor

STATE OF INDIANA

____ COURT

In the Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**INTAKE OFFICER'S ADVICE TO A DELINQUENT CHILD AND PARENT,
GUARDIAN OR CUSTODIAN**

IC 31-37-8-4; IC 31-37-12-6

TO CHILD AND HIS OR HER PARENT, GUARDIAN OR CUSTODIAN:

You are hereby advised of the following rights:

1. You have a right to know the nature of allegations against said child;
2. The undersigned intake officer is conducting a preliminary inquiry to assist the prosecutor in determining whether a petition should be filed alleging that said child is a delinquent child;
3. The undersigned intake officer will recommend whether to file a petition, informally adjust the case, refer the child to another agency, or dismiss the case;
4. Said child has a right to remain silent, anything he says may be used against him in subsequent judicial proceedings, he has a right to consult with an attorney before he talks with the intake officer, and he has a right to stop at any time and consult with an attorney, and to stop talking with the intake officer at any time;
5. Said child cannot afford an attorney, the Court will appoint one for him or her; and
6. The parent, guardian or custodian may controvert any allegations made at the dispositional or other hearing concerning their participation or may controvert any allegations concerning their financial responsibility for any services that would be provided.

You are further advised that the parents, guardian or custodian of the child may be subjected to the following obligations if the child is adjudicated a delinquent child:

1. The parent, guardian or custodian may be required to participate in a program of care, treatment or rehabilitation for the child; and
2. The parent or guardian of the estate may be held financially responsible for any services provided for himself or the child including the services of court appointed counsel.

Dated this ____ day of _____, 20__.

Intake Officer

By signing this paper, you agree only that you have received this advice.

Signature of Child

Signature of Parents, Guardian or Custodian

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

CONSENT TO BACKGROUND INVESTIGATION AND RELEASE

The above named child and his (parent) (guardian) (custodian) hereby give consent to the _____ County Probation Department to make a complete and detailed investigation of the child's conduct and progress in school, the child's physical, medical and mental condition history, the nature of the child's home and family, and other matters concerning the child's background in order to help the Department and Court decide what best can be done to help the child.

We hereby authorize any person, agency or school corporation having any such information to release all records and information as to such child to _____ County Probation Department, at _____

 (address)

A photocopy of this consent and release shall be as valid as the original .

Date: _____

Child

Witness: _____

(Parent) (Guardian) (Custodian)

Standard Preliminary Inquiry
Promulgated by Indiana Judicial Center

PROBATION OFFICERS REPORT OF PRELIMINARY INQUIRY AND/OR PREDISPOSITIONAL REPORT

Warning: This report is
confidential according to I.C. §31-
39-1-2 and may only be released
with specific authorization.

Indiana Code § 31-37-8-2 and 31-37-17-1

STATE OF INDIANA

(INSERT COURT NAME)

<i>Fake probation</i>

In the Matter of:
A Child Alleged to be a Delinquent Child

Date Completed: _____
Assigned P. O.: _____ Report Prepared By: _____

JUVENILE INFORMATION

Case No.(s): _____
Legal _____ Name: _____
Alias(es)/Nickname(s): _____ Custodial _____
Person(s) or Agency: _____ Street Address: _____
_____ City: _____
_____ State: _____ Zip: _____ Telephone: _____ Social Security
No.: _____ DOB: _____ POB: _____
_____ Age: _____ Race: _____ Gender: _____ Ht.: _____ Wt.: _____ Eyes: _____
Hair: _____ ID _____ Marks: _____
Driver's Lic. No.: _____ State of Issue: _____ Status: _____

JUVENILE'S LEGAL INVOLVEMENT

____ Chg(s) pending ____ Detainer(s) ____ Inf. Adj. ____ Probation ____ Res. Plcmnts. ____ IDOC
____ DFCS Ward ____ Violations ____ Parole ____ Waived ____ Adult Status ____ Other
Contacts

DELINQUENT ACT(S) INFORMATION

Alleged Offense: _____ Date Committed: _____ I.C. _____
____ Class (if committed by an adult): ____ Felony/Misdemeanor (Circle One)

Alleged Offense: _____ Date Committed: _____
I.C. _____ Class (if committed by an adult): ____ Felony/Misdemeanor (Circle One)

Alleged Offense: _____ Date Committed: _____
I.C. _____ Class (if committed by an adult): ____ Felony/Misdemeanor (Circle One)

Referring Agency: _____ Custody Status: _____

____ Co-Offender(s)/Status: _____
____ Case _____ No.(s): _____

PRIOR LEGAL HISTORY

Date of Referral Charge(s) Case No. Disposition (Date/Type)

EDUCATION, EMPLOYMENT, HEALTH

School: _____ Grade/Status: _____ Special
 Educational Classification: ___ Yes ___ No Special Educational Placement: ___ Yes ___ No

Mental Health Referrals: ___ Yes ___ No
 Physical Problems: ___ Yes ___ No
 Alcohol/Drug Use: ___ Yes ___ No
 Gang Involvement: ___ Yes ___ No

If the answer is yes to any of the questions in this section, an explanation is required in the "additional information" section.

Employer: _____ Position: _____
 _____ Hours: _____ \$ _____/hr.

FAMILY INFORMATION

Father's Name: _____ SSN (if available): _____
 Address: _____ Employment: _____
 _____ Hours: _____
 Home Telephone: _____ Work Telephone: _____

Mother's Name: _____ SSN (if available): _____
 Address: _____ Employment: _____
 _____ Hours: _____
 Home Telephone: _____ Work Telephone: _____

Guardian: _____
 Address: _____ Employment: _____
 _____ Hours: _____
 Home Telephone: _____ Work Telephone: _____

Significant Other(s): _____ Relationship: _____
 Address: _____ Employment: _____
 _____ Hours: _____
 Home Telephone: _____ Work Telephone: _____

Siblings:

NAME	REL.	AGE	ADDRESS	LEGALHISTORY
------	------	-----	---------	--------------

ADDITIONAL INFORMATION

EVALUATION/SUMMARY

RECOMMENDATIONS

Preliminary Inquiry:

☐ Dismissal ☐ Referral to other agency
☐ Informal Adjustment ☐ Warning and Release
☐ File Petition ☐ Other

Reason _____ for _____ recommendation:

Custody Recommendation:

☐ Release to Parent ☐ Release to Guardian ☐ Informal Home Detention
☐ Formal Home Detention ☐ Electronic Surveillance ☐ Shelter Care
☐ Juvenile Center ☐ Not in Custody ☐ Other

Comments: _____

Predispositional Report:

If juvenile admits to charge, recommendations for disposition (Complete if applicable):

INFORMAL ADJUSTMENT

(IC 31-37-9)

- I. After the preliminary inquiry, and upon approval by the juvenile court, the intake officer may implement a program of informal adjustment if the officer has probable cause to believe that the child is a delinquent child. (IC 31-37-9-1) The child and parent, guardian, custodian, or attorney must consent to the program. (IC 31-37-9-2) A program of informal adjustment may not exceed six (6) months, except by approval of the juvenile court which may extend a program of informal adjustment an additional six (6) months. (IC 31-37-9-7)
- II. A monthly user's fee of not less than \$5.00 or more than \$15.00 may be jointly assessed against the child and parent, guardian or custodian for each month the child participates in the program in lieu of court cost. IC 31-37-9-9
- III. If the parents, guardian, or custodian fail to participate in the program, the probation department or the county office of family and children may file a petition for compliance. After notice and a hearing the court may order the parents, guardian or custodian to participate. If the parents, guardian, or custodian again fail to comply, they may be found in contempt of court. IC 31-37-9-3 & 31-37-9-4)
- IV. Procedure for informal adjustment.
 - A. The intake officer may implement a program of informal adjustment after the following steps have been completed:
 1. intake officer must determine there is probable cause to believe the child is a delinquent child;
 2. the preliminary inquiry, with recommendation for informal adjustment, must be submitted to the prosecuting attorney, unless the intake officer is authorized to submit a recommendation for Informal Adjustment directly to the court. (IC 31-37-8-5)
 3. the child and his parent, guardian or custodian after having been advised of their rights, must consent to the program and sign the same. Consider having the parties sign the program form (D-4.03);
 4. the program of informal adjustment must be approved by the juvenile court. The program cannot exceed six (6) months, but may be extended for an additional six (6) months, which extension must also be approved by the court.
 5. the probation user's fee, if any, should be noted. See IC 31-37-9-9. The juvenile court may order each child on informal adjustment to pay not less than \$5.00 or more than \$15.00. The child and parents are jointly liable for

- the fee.
6. It appears no specific provision has been made in the statute for the method of approval by the court of a program of informal adjustment. Consider the following:
 - (a) judicial endorsement upon the informal adjustment agreement, FORM D-4.03; USE FORM D-4.03 TOGETHER WITH FORM D-4.04.
 - (b) docketing; **NOTE: All informal adjustments must be docketed as juvenile miscellaneous (JM) according to the Office of State Court Administrator.**
 - (c) order book entry.
 1. petition for compliance (IC 31-37-9-4)
 7. Contempt is not available to enforce an informal adjustment unless the procedures under IC 31-37-9-4 are followed. The Benchbook Committee recommends that a Petition for Compliance be filed and ordered at the time the informal adjustment is approved.
 8. Should the parents, guardian or custodian fail to comply in a program of informal adjustment ordered by the Court, the probation department or office of family and children may file a Rule to Show Cause. See D-12.05.

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

PROGRAM OF INFORMAL ADJUSTMENT

Whereas, written information indicating that the above named child, _____, is a delinquent child has been filed with the undersigned Intake Officer of said Court, and the undersigned has made a preliminary inquiry and has determined that there is probable cause to believe that said child is a delinquent child.

Therefore, the undersigned Intake Officer has concluded that a program of informal adjustment should be undertaken for a period of _____ months, subject to the consent of said child and the parent, guardian or custodian of said child, and subject to the approval of said Court, whereby the undersigned Intake Officer shall assume supervision over said child, and said child shall observe and obey the following rules:

1. You are to obey all town, city, county, state and federal laws and ordinances, and you shall be guilty of no acts of bad conduct of any kind or character;
2. You shall report to the Probation Department at such times and places as shall be directed by such Probation Department. Any change of address, school or employment must be promptly reported to the Probation Department;
3. You are to participate in programs and activities specifically assigned and outlined as part of your program;
4. You are to have the permission of your parents for any activity which requires you to be away from your home;
5. You must obey your parents at all times;
6. You shall not possess or consume alcoholic beverages or illegal drugs;
7. You are to be in the confines of your home by _____ p.m., unless you are in the presence of one or both of your parents or in the presence of a responsible person with the prior approval of your parents or the Probation Officer;
8. You are to be very careful as to the people with whom you associate, and you shall not associate with any persons who are in any sort of trouble with the law. You shall not attend places of ill repute;
9. You are to attend school regularly with no absence or tardiness of an unexcused nature, and you shall diligently apply yourself to your work and conduct yourself according to school policy. If you are out of school, you are to find suitable employment with reasonable hours;
10. You are to make restitution in the amount of \$ _____ to _____

_____ payable as follows:

11. You and your parents are responsible for the payment of a monthly probation user's fee of \$_____ to _____

_____.

12. Special Terms: _____

Dated: _____

Intake Officer

I have read the foregoing program for informal adjustment, and I consent and agree to it.

Child

The undersigned, parent, guardian or custodian(s) of said child, hereby consent and agree to the same.

ORDER

The Probation Officer has filed a Petition for Order of Compliance with the Program of Informal Adjustment. The parents have waived notice and hearing thereon for themselves. The above and foregoing program of informal adjustment is approved by the Court. The parents are ordered to participate in the Informal Adjustment.

Dated: _____

Judge

STATE OF INDIANA

COURT

In the Matter of _____
A Child Alleged to be a Delinquent Child

Cause No. _____

PETITION FOR COMPLIANCE

Comes now _____, Probation Officer, and moves the Court for an Order of Compliance on the Program of Informal Adjustment.

Date: _____

Probation Officer

Comes now the parent/guardian/custodian and, and waive notice of hearing, and hearing in the Petition for Compliance and agree to an Order of Compliance ordering them to participate in a Program of Informal Adjustment.

Date: _____

Parent/Guardian/Custodian

Parent/Guardian/Custodian

INSTITUTING FORMAL PROCEEDINGS

I. Necessary Parties

A. Parties to juvenile delinquency proceedings

1. Child
2. Parent, guardian, or custodian
3. Prosecutor

IC 31-37-10-7

B. All rights of parties provided in the Indiana Rules of Trial Procedure apply in juvenile delinquency proceedings.

C. Office of Family and Children can file a status delinquency.

IC 31-37-10-1(b)

II. Filing of Petition

A. Court approval to file petition

1. Two elements essential for the court to approve the filing of a delinquency petition based on an alleged criminal act are:
 - a. finding of probable cause to believe that the child committed an act that would be a crime if committed by an adult; and
 - b. finding that it is in the best interest of the child or the public that the petition be filed.

IC 31-37-10-2

2. A court order approving the filing of a delinquency petition may be entered by the court *ex parte*, without notice to child, parent, or counsel.

3. Status Delinquency: Three elements essential for the court to approve the filing of a delinquency petition based on an act of delinquency other than an act that would be a crime if committed by an adult are:

- a. finding of probable cause to believe that the child committed an act of delinquency other than an act that would be a crime if committed by an adult;
- b. finding that the child needs care, treatment, or rehabilitation that he is not receiving, that he is unlikely to accept voluntarily, and that is unlikely to be provided or accepted without the coercive intervention of the court; and
- c. finding that it is in the best interest of the child of the public that the petition be filed..

IC 31-37-2-1, IC 31-37-10-2

4. Request for a child to be taken into detention. See Chapter 1.

III. Contents of Petitions

A. A delinquency petition must be:

1. Verified
2. Entitled "In the matter of Y, A Child Alleged to be a Delinquent Child," and
3. Contain the following information:
 - a. a citation to the section of this article that gives the juvenile court jurisdiction in the proceeding. IC 31-30-1-1;
 - b. a citation to the statute that the child is alleged to have violated
 - c. a concise statement of the facts upon which the allegations are based, including the date and location at which the alleged act occurred;
 - d. the child's name, birth date and address, if known;
 - e. the name and address of the child's parent, guardian, or custodian, if known; and
 - f. the name and title of the person signing the petition.

IC 31-37-10-3

B. Parental Participation Petition

1. A petition must be filed in order to require the participation of a parent or responsible adult in a program of care, treatment or rehabilitation for a child with the following limited exception:

- a. if the parents are summoned and appear at the initial hearing;
- b. are advised that they may be required to participate in such a program;
- c. have an opportunity to respond to the proposed program;
- d. agree to participate in program;
- e. and if the program is then incorporated in a court order.

[NOTE: The order would then be binding on the responsible adult and may be enforced by the court's contempt power].

2. If the responsible adult refuses to consent to such an order, a "Parental Participation Petition" would then be required. *IC 31-37-15-(1)-(4)*.
3. The petition may be filed either at the beginning of the juvenile proceedings or at any time thereafter.
4. The petition may also be incorporated as a part of the petition concerning the child.

IV. Summons:

A. A summons must be issued for the child, parent, guardian, custodian or other persons.
IC 31-37-12-2 (b)

B. Service of summons can be waived by appearance.
IC 31-32-9-1

V. Time Limitations

A. A seven (7) day time limit exists for the filing of a delinquency petition in cases in which a child is in detention. If the child is in detention, and the seven-day time is not followed, the child shall be released on his own recognizance or to his parents, guardians or custodians.

IC 31-37-11-7

B. The filing of the delinquency petition triggers the running of the one-year time limit for trial provided by Crim.R 4(C) and **IC 31-37-11-5. State *ex rel.* Hirt v Marion Superior Court**, 451 N.E.2^d 308 (Ind. 1983).

C. Speedy Trial. If a child is in detention, the trial must be commenced no later than 20 days after the petition is filed, excluding Saturday, Sundays and legal holidays. A child who is ordered detained in the home of the child's parent, guardian or custodian or who is subject to other conditions of release under I.C. 31-37-6-6 may not be considered detained for these purposes. If the child is not in detention, the trial must be commenced no later than 60 days after the petition is filed, excluding Saturday, Sundays and legal holidays.

IC 31-37-11-2

D. Waiver denied. If waiver denied, fact finding hearing must be held no later than 10 days after denial.

IC 31-37-11-3

STATE OF INDIANA

COURT

In The Matter _____

Case No. _____

A Child Alleged to be a Delinquent Child

REQUEST FOR CUSTODY ORDER

The undersigned (Deputy) Prosecuting Attorney (Attorney for County Office of Family and Children) respectfully requests that the Court enter an order for taking of said child into custody. Your petitioner alleges that a ground for detention exists under IC 31-37-6-6 in that:

- () the child is unlikely to appear for subsequent proceedings;
- () detention is essential to protect the child or the community;
- () the parent, guardian or custodian cannot be located or is unable or unwilling to take custody of the child;
- () the return of the child to the child's home is or would be contrary to the best interests and welfare of the child, and harmful to the safety or health of the child;
or
- () the child has a reasonable basis for requesting that he not be released.
- () Said child (is) (is not) in custody at the time of this request.

(Your petitioner will support this request with sworn testimony.)

(Your petitioner supports this request with affidavit attached hereto.)

Dated: _____

(Deputy) Prosecuting Attorney
(Attorney for County Office of Family and Children)

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**ORDER APPROVING FILING OF DELINQUENCY PETITION
CRIME DELINQUENT**

Comes now, _____,

- () Deputy/Prosecuting Attorney.
 () Attorney for the _____ County Office of Family and
 Children and files a request to file a petition alleging that _____
 _____ is a delinquent child.

A written information signed by _____ and prosecutor's
 request for preliminary inquiry, heretofore filed with an Intake Officer of this Court,
 _____ (Probation Officer) (Caseworker) and said Intake Officer's
 report of preliminary inquiry are filed and made a part of the record.

The Court having considered the preliminary inquiry and the evidence of probable cause
 finds probable cause to believe that said child is a delinquent child in that:

_____ said child committed an act that would be an offense if committed by an adult, _____,
 _____, and that it is in the
 best interests of the child (and) (or) the public that the delinquency petition be filed.

The Court approves the filing of said petition.

So ordered this _____ day of _____, 20 ____.

 Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**ORDER APPROVING FILING OF DELINQUENCY PETITION
STATUS DELINQUENT**

Comes now, _____,

() Deputy/Prosecuting Attorney.

() Attorney for the _____ County Department of Public Welfare,
and files a request to file a petition alleging that _____ is a delinquent child.

A written information signed by _____ and prosecutor's
request for preliminary inquiry, heretofore filed with an Intake Officer of this Court, _____
_____ and said Intake Officer's report of preliminary
(Probation Officer) (Caseworker)
are filed and made a part of the record.

The Court having considered the preliminary inquiry and the evidence of probable cause
finds probable cause to believe that said child is a delinquent child in that said child:

- () leaves home without reasonable cause and without permission of (his) (her) parent, guardian, or custodian who requests said child's return;
- () Violates the compulsory school attendance law (IC 20-8.1-3);
- () habitually disobeys the reasonable and lawful commands of (his) (her) parent, guardian, or custodian,
- () commits an act if, before becoming eighteen years of age, the child violates IC 7.1-5-7 concerning minors and alcoholic beverages; or
- () has committed a curfew violation;
and that said child needs care, treatment or rehabilitation that he is not receiving, and that said child is unlikely to accept voluntarily, and that is unlikely to be provided or accepted without the coercive intervention of the Court, and that it is the best interests of the child (and (or) the public that the delinquency petition be filed.

The Court approves the filing of said petition.

Dated: _____

Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

PETITION ALLEGING DELINQUENCY

Your petitioner alleges and says:

1. The above name child, _____, was born _____ and is _____ years of age.
2. That said child resides at _____ with _____.
3. That the names and addresses of the child's parents, guardian or custodian are as follows:

Name	Parent, Guardian, or Custodian	Address
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. The citation to the section of the Indiana Juvenile Code that gives this Court jurisdiction in this proceeding is IC 31-30-1-1
5. That said child is a delinquent child as defined in IC31-30-10-3, in that: _____

All contrary to _____

1. Specify applicable criminal statute, if any, if appropriate.
2. Insert IC 20-8.1-3 for truancy cases.
3. Insert IC 31-37-3 for curfew violators.
4. Insert I.C. 7.1-5-7 concerning minors and alcoholic beverages.

Wherefore, the petitioner prays for a hearing to determine if said child is a delinquent child and for any and all relief proper in the premises.

The undersigned affirms under the penalties of perjury that the foregoing statements and representations are true.

Dated: _____

Signature of Petitioner

Name and title of Person
Signing Petition

STATE OF INDIANA

____ COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**ORDER SETTING INITIAL HEARING ON DELINQUENCY PETITION
AND FOR ISSUANCE OF SUMMONS**

The Court sets this cause for Initial Hearing on _____ at ____ (A.M.) (P.M.) and orders the Clerk of the Court to issue a summons for said child, _____ and for the following parent, guardian, custodian, guardian ad litem or other persons:

Name	Relationship	Address
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: _____

Judge

ORDER FOR TAKING CHILD INTO CUSTODY

The Court having heretofore granted a request for taking of said child into custody, the Court now orders the Clerk to endorse upon said summons an order for the officer serving same to take said child into custody at once and deliver the child to: _____ for detention at _____ until further order of the Court.

So ordered this _____ day of _____, 20____.

Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

SUMMONS

To: _____

(Insert name, address of child and the parent, guardian or custodian of the child above)

You are hereby notified that a Petition Alleging Delinquency, attached hereto, has been filed in the above Court, charging the above named child with being a delinquent child, and you are hereby commanded to appear before the Judge of said Court at the Court House, Room _____, in _____ Indiana, on the _____ day of _____, 20____, at _____.M., for an Initial Hearing and such further proceedings as may be ordered by the Court in this matter.

If you fail to appear as above commanded, you may be held in contempt of Court and a warrant may be issued for your person by the Court.

Dated this _____ day of _____, 20_____.

(SEAL) _____
Clerk Court
By: _____
Deputy Clerk

ENDORSEMENT FOR TAKING CHILD INTO CUSTODY

To the Sheriff of _____ County, Indiana:

By order of the above Court, you are hereby commanded to take the above named child into custody and deliver the child to: _____ for detention in the _____ until further order of the Court.

Dated this _____ day of _____, 20_____.

Clerk Court
By: _____
Deputy Clerk

ACKNOWLEDGMENT OF SERVICE OF SUMMONS

The undersigned hereby waives the service of the above summons and voluntarily agrees to appear in Court at the time and place set forth above.

By: _____

INITIAL HEARING ON PETITION

I. Petition and Summons

- A. Determine that Petition and Summons were issued to:
1. Child
 2. Parent, Guardian, Custodian, or Guardian ad litem
 3. Any other person necessary for the proceedings

II. Advisement of Rights and Nature of Hearing

- A. IC 31-37-12-3. The Court shall first determine whether counsel has been:
1. Waived under IC 31-32-5; or
 2. Previously obtained
 3. If not waived or previously obtained, the Court shall appoint counsel under IC 31-32-4

Appointment of counsel for child who is alleged to be delinquent is not conditioned on child's indigency; rather, court should consider only whether child has attorney and whether child has waived his right to counsel. **Woolf v. State**, 545 N.E.2d 590 (Ind. App., 1989).

Failure to appoint counsel to represent 17-year-old defendant prior to hearing on motion to waive jurisdiction of juvenile court was error regardless of who might ultimately pay for cost of appointment and was such as to make waiver unlawful and require reversal of conviction obtained in superior court subsequent to waiver. **Adams v. State**, 411 N.E.2d 160 (Ind. App., 1980).

The statute conditions the appointment of counsel upon the determination of only two factors: (1) whether the child has an attorney and (2) whether the child has waived his right to counsel in accordance with IC 31-6-7-3, (now IC 31-32-5). **Adams v. State**, 411 N.E.2d 160 (Ind. App., 1980).

IC 31-32-4-4: Payment for counsel shall be made under IC 31-40-1

USE FORM D-6.02 Order on Appointment of Attorney

- B. The Court shall inform the child, the child's parent, guardian, or custodian, of the following:
1. The nature of the allegations against the child
 2. The child's right to the following:
 - a. Be represented by counsel
 - b. Have a speedy trial

- c. Confront witnesses against the child
- d. Cross examine witnesses against the child
- e. Obtain witnesses or tangible evidence by compulsory process
- f. Introduce evidence on the child's own behalf
- g. Refrain from testifying against himself or herself
- h. Have the State prove beyond a reasonable doubt the child committed the delinquent act charged.

3. The possibility of waiver to a court having criminal jurisdiction

4. The dispositional alternatives available to the court if the child is adjudicated delinquent

It is error not to advise child and parent of rights and dispositional alternatives. **Matter of Lemond**, 413 N.E. 2d, 228 (Ind. 1980)

An alleged delinquent was properly advised of his rights when only his mother signed the court's written advisement. He did not show that the trial court failed to provide the statutory advisement or was prejudiced from a failure of advisement. **J.M. v. State**, 727 N.E. 2d 703, (Ind. 2000)

C. Advisements to Parent, Guardian, or Custodian IC 31-37-12-6

1. The juvenile court shall inform the parent or guardian of the estate that if the child is adjudicated a delinquent child:

- a. The parent, guardian or the custodian of the child may be required to participate in a program of care, treatment, or rehabilitation for the child;
- b. The parent or guardian (*note: statute does not include custodian*) may be held financially responsible for any services provided for the child or himself, and
- c. The parent, guardian or custodian of the child may controvert any allegations made at the dispositional or other hearing concerning his participation or may controvert any allegations concerning financial responsibility for any services that would be provided.

D. IC 31-32-5-1. Waiver of rights:

1. Any rights guaranteed to the child by law may be waived only by:

- a. Child and child's counsel, if retained or appointed;
- b. Child and parent, guardian, guardian ad litem or custodian of the child, after meaningful consultation with the child, and if that person has no adverse interest to the child; or
- c. Child, if emancipated.

Statute does not authorize minor to waive his own rights; strict compliance with requirement is necessary to safeguard rights of juveniles. **Beldon v. State**, 657 N.E.2d 1241 (Ind. App. 1995), **Hickman v. State**, 654 N.E.2d 278 (Ind.Ct.App. 1995). Misdemeanor traffic law violations by child over

age 15 are excepted. **Wehner v. State**, 684 N.E. 2d 539 (Ind.Ct.App., 1997).

Statute does not authorize unilateral waiver of rights by child in delinquency proceedings, and non-attorney adult who joins the child in the waiver of rights must have no interest adverse to the child. **Borum v. State**, 434 N.E.2d 581 (Ind Ct.App., 1982), **Trowbridge V. State**, 717 N.E. 2d 138 (Ind.Ct.App., 1999).

*OFC wardship of child does not prevent actual custodian to act as parent for purposes of consultation prior to waiving rights. **Graham v. State**, 464 N.E.2d 1 (Ind. 1984).

2. IC 31-32-5-2 Child may waive meaningful consultation if the child is informed of that right, the waiver is made in the presence of the of child's custodial parent, guardian, custodian, guardian ad litem or attorney, and the waiver is made knowingly and voluntarily.

Child did not waive her right to counsel when no meaningful consultation occurred between child and her mother. **G.B. v. State**, 715 N.E.2d 951 (Ind. Ct. App. 1999)

III. Waiver of Jurisdiction

A. The court shall determine whether the prosecutor intends to seek a waiver of juvenile jurisdiction. IC 31-37-12-4. **NOTE: The court should not accept an admission or denial from the juvenile if the prosecutor indicates that waiver is intended.**

If waiver is sought, further juvenile proceedings are suspended until the waiver question is resolved. **Partlow v. State**, 453 N.E.2d 259 (Ind. 1983).

Counsel must be appointed to represent juvenile on waiver petition; failure to do so constitutes error. **Adams v. State**, 411 N.E.2d 160 (Ind. App., 1980).

See Form 6.04 if waiver is requested. For Procedures and Forms on Waiver see Chapter 7.

IV. Reading of Allegations

A. The allegations contained in the petition shall be read in open court, unless waived by counsel.

B. The Court should inquire as to whether the child and parent understand the nature of the allegations.

When reading charges to juvenile in delinquency proceeding, court was not required to read statutes juvenile was accused of violating. **M.R. v. State**, 605 N.E.2d 204. (Ind.Ct. App., 1992)

V. Admit/deny

A. If waiver is not requested by the State, or is denied by the Court, the Court should then determine if the juvenile wishes to admit or deny the allegations of the petition. IC 31-37-

12-7. A failure to respond constitutes a denial.

B. The Benchbook Committee recommends that if the juvenile admits the allegations in the petition, the court should determine if there is a factual basis for the admission. However, see **M.R. v. State**, 605 N.E.2d 204. (Ind.Ct. App., 1992)

USE FORM D-6.03 if the allegations are admitted (crime delinquent).

USE FORM D-6.05 if the allegations are admitted (status delinquent).

USE FORM D-6.06 if the allegations are denied.

See also "Dialogue for Hearing" which is found in Chapter 8 of this Bench book.

C. If the child admits the allegations, the Court shall enter judgment accordingly, and:

1. Schedule a dispositional hearing, or
2. With the consent of all parties, the Court may proceed to immediate dispositional hearing. IC 31-37-12-9.

D. If the child denies the allegations, the Court shall:

1. Schedule a fact finding hearing within statutory time limits (see IC 31-37-11), or
 2. Proceed to immediate fact-finding hearing with the consent of all parties.
- IC 31-37-12-9.

E. In all cases where a finding of delinquency is based on a delinquent act that would be a felony if committed by an adult, the juvenile court shall state in the findings the specific statute that was violated and the class of felony had it been committed by an adult. IC 31-37-13-5.

If a child is in detention, a fact-finding or waiver hearing on the petition shall be held within twenty (20) days (excluding Saturdays, Sundays, and legal holidays) after the petition has been filed. [60 days if the child is not in detention.] IC 31-37-11-2.

Speedy trial provision of Juvenile Code, rather than criminal rules, governs speedy trial issue as to juvenile matters. **C.W. v. State**, 643 N.E.2d 915 (Ind. Ct.App., 1994).

The filing of the delinquency petition starts the running of the one year time limit for trial provided by IC 31-6-7-6(e) from IC 31-37-11-5. **State ex rel. Hirt v. Marion Superior Court**, 451 N.E.2d 308 (Ind. 1983).

Noncompliance with the 20 day time limit entitles a juvenile to release from detention, but would not warrant dismissal of case or result in juvenile court losing jurisdiction. **Brown v. State**, 448 N.E.2d 10 (Ind. 1983); **Gerrick v. State**, 451 N.E.2d 327 (Ind. 1983); **Spikes v. State**, 460 N.E.2d 954 (Ind. 1984).

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER ON APPOINTMENT OF ATTORNEY

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child,
_____, appears in person and without counsel. The parent(s)
[(guardian) (custodian)] appear in person. Also, (Intake Officer)
_____.

The delinquency petition comes on for Initial Hearing.

The Court finds that said child does not have an attorney representing the child's interests,
that the right to an attorney has not been waived in the manner provided by IC 31-32-5-2, and that an
attorney must be appointed for said child.

The Court, therefore, appoints _____ as attorney to represent
said child, and hearing is continued to the _____ day of _____, 20____, at
_____ o'clock _____.M., and the parties are ordered to appear for said hearing.

Clerk is directed to notify the attorney of appointment and parents and child are ordered to
contact said attorney for an appointment forthwith.

So ordered this ____ day of _____, 20_____.

Judge

STATE OF INDIANA

COURT

In The Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**ORDER ON INITIAL HEARING ON DELINQUENCY PETITION
CRIME DELINQUENT (No Waiver Requested)**

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child,
_____, appears in person and with/without counsel. The parent(s)
(guardian) (custodian) appear in person. Also, (Intake Officer) _____,
_____ appears.

The delinquency petition comes on for Initial Hearing.

The Court now finds that:

- () attorney _____ appears for child; or
() child and parents waive the child's right to an attorney pursuant to IC 31-32-5-1.

The Court next determines that:

- () the delinquency charged is not subject to waiver under IC 31-30-3;
() the Prosecutor does not intend to seek a waiver of juvenile jurisdiction;

The Court having informed the child and said parent(s), guardian or custodian of the matters required by IC 31-37-12-5 & 31-37-12-6, now finds that the child is _____ years of age and that said child voluntarily admits the allegations of the delinquency petition.

[Use following paragraph if felonious act admitted, otherwise strike it]

The Court finds that the act(s) admitted by the child would be a felony if committed by an adult. The Court finds that the statute(s) violated by the child, and the class of the felony, if committed by an adult, (is) (are):

Statutory Citation

Class of Felony:

Upon such finding it is now adjudged by the Court that said child is a delinquent child as

defined by IC 31-37-1-1.

[Include the following applicable paragraphs:]

- A) The Court orders _____ to prepare and file a Pre dispositional Report and the Court schedules a Dispositional Hearing in this case for the _____ day of _____ 20____, at _____ o'clock _____.M. and further orders:
- _____
- _____
- B) The legal settlement of the child is _____. The _____ County Office of Family and Children shall provide notice required by IC 20-8.1-6.1-5.5.
- C) The Court refers the possibility of a restrictive placement of the child for review by local coordinating committee.
- D) By agreement of the parties, and with the consent of the child and child's parent(s), an immediate Dispositional Hearing is requested and held.

So ordered this _____ day of _____, 20_____.

Judge

STATE OF INDIANA

____ COURT

In The Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**ORDER ON INITIAL HEARING ON DELINQUENCY PETITION
CRIME DELINQUENT (Waiver Requested)**

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child,
_____, appears in person and with/without counsel. The parent(s)
(guardian) (custodian) appear in person. Also, (Intake Officer) _____,
_____ appears.

The delinquency petition comes on for Initial Hearing.

The Court now finds that:

- ☐ attorney _____ appears for child; or
☐ child and parents waive the child's right to an attorney pursuant to IC 31-32-5-1.

The Court next determines that the State of Indiana intends to seek waiver of juvenile court jurisdiction.

This case is now set for Waiver Hearing for the ____ day of _____, 20____, at
_____ M.

The Court now finds as follows:

The legal settlement of the child is _____. The
_____ County Office of Family and Children shall provide notice required by IC
20-8.1-6.1-5.5.

So ordered this ____ day of _____, 20____.

Judge

STATE OF INDIANA

____ COURT

In The Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER ON INITIAL HEARING ON STATUS DELINQUENCY PETITION

The State of Indiana appears by _____,
 (Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child,
 _____, appears in person and with/without counsel. The parent(s)
 (guardian) (custodian) appear in person. Also, (Intake Officer):
 _____ appears.

The delinquency petition comes on for Initial Hearing.

The Court having informed the child and said parent(s), guardian or custodian of the matters required by IC 31-37-12-5 and 31-37-12-6, now finds that the child is ____ years of age and that said child voluntarily admits the allegations of the delinquency petition. Upon such finding it is now adjudged by the Court that said child is a delinquent child as defined by IC 31-37-2-1.

[Include the following applicable paragraphs]

- A) The Court orders _____ to prepare and file a Predispositional Report and the Court schedules a Dispositional Hearing in this cause for the ____ day of _____ 20 __, at _____ o'clock __.M. and further orders: _____
- B) The Court now finds the legal settlement of the child is _____. The _____ County Office of Family and Children shall provide notice required by IC 20-8.1-6.1-5.5.
- C) The Court refers the possibility of a restrictive placement for review by local coordinating committee.
- D) By agreement of the parties, and with the consent of the child and child's parent(s), an immediate Dispositional Hearing is requested and held.

Dated: _____

Judge

STATE OF INDIANA

COURT

In The Matter Of _____ Case No. _____

A Child Alleged to be a Delinquent Child

**ORDER ON INITIAL HEARING ON DELINQUENCY PETITION
(Denial of Delinquency)**

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child,
_____, appears in person and with/without counsel. The parent(s) (guardian)
(custodian) appear in person. Also, (Intake Officer): _____, appears.

The delinquency petition comes on for Initial Hearing.
The Court now finds that:

- ☐ attorney _____ appears for child; or
- ☐ child and parents waive the child's right to an attorney pursuant to IC 31-32-5-1.

The Court next determines that:

- ☐ the delinquency charge is not subject to waiver under IC 31-30-3;
- ☐ the Prosecutor does not intend to seek a waiver of juvenile jurisdiction.

[If Waiver is not requested, or if waiver has been denied, then proceed as follows:]

The Court, having informed the child and said parent(s), guardian, or custodian of the matters required by IC 31-37-12-5 and 31-37-12-6, now finds that said child denies the allegations of the delinquency petition.

- A) The Court now orders a Fact-finding Hearing held on this cause for the ____ day of _____, 20 ____, at _____ o'clock ____ M. and further orders that:

- B) By agreement of parties, an immediate Fact-finding Hearing is requested and held.
- C) The legal settlement of the child is _____. The _____ County Office of Family and Children shall provide notice required by IC 20-8.1-6.1-5.5.

So ordered this ____ day of _____, 20 ____.

Judge

WAIVER OF JUVENILE JURISDICTION

I. STATUTORY AUTHORITY AND PREREQUISITES

A. **Waiver hearings:** The statutory basis for waiver of juvenile court jurisdiction is found in I.C. 31-30-3-1 et seq.

(1) Waiver of Jurisdiction refers to an order of the juvenile court that waives the case to a court that would have jurisdiction had the act been committed by an adult. Waiver is for the offense charged and all included offenses.

B. **Nonpresumptive Waiver** arises under **I.C. 31-30-3-2** when a child fourteen (14) years or older is charged with an act which is either: (1) heinous or aggravated with greater weight given to acts against the person than to acts against property; or (2) that is a part of a repetitive pattern of delinquent acts even though less serious.

In a "Nonpresumptive Waiver" proceeding under I.C. 31-30-3-2 the burden is upon the State to prove:

- (1) the child was fourteen (14) years of age or older when the act charged was allegedly committed;
- (2) there is probable cause to believe that the child committed the act;
- (3) the child is beyond rehabilitation under the juvenile justice system; and
- (4) it is in the best interests of the safety and welfare of the community that the child stand trial as an adult.

C. **Nonpresumptive Waiver** arises under **I.C. 31-30-3-3** when a child sixteen (16) years or older is charged with an act which if committed by an adult would be a felony under I.C. 35-48-4, (Controlled Substances) and it is in the best interests of the safety and welfare of the community for the child to stand trial as an adult.

NOTE: If the violation is under I.C. 35-48-4-1 (Dealing in cocaine or narcotic drug), I.C. 35-48-4-2(Dealing in Schedule I, II or III Controlled Substance) or I.C. 35-48-4-3 (Dealing in a Schedule IV Controlled Substance), the juvenile court does not have jurisdiction of an individual sixteen (16) years of age or older.

D. **Presumptive Waiver** arises under **I.C. 31-30-3-4** when a **child ten (10) years old or older [but less than age 16]** is charged with an act which would be **murder** if committed by an adult unless it would be in the best interest of the child and the safety and welfare of the community for the juvenile court to retain jurisdiction.

NOTE: If the child, who is sixteen (16) years of age or older and is charged with murder, the juvenile court does not have jurisdiction. I.C. 31-30-1-4.

E. **Presumptive Waiver** arises under **I.C. 31-30-3-5** when a child sixteen (16) years or older is charged with an act which if committed by an adult would be: a Class A or Class B felony, except a felony defined by I.C. 35-48-4 (Controlled Substances); involuntary manslaughter as a Class C felony under I.C. 35-42-1-4; or reckless homicide as a Class C felony under I.C. 35-42-1-5, except for those cases in which the juvenile court has no jurisdiction under I.C. 31-30-1-4.

F. **Presumptive Waiver** arises under **I.C. 31-30-3-6** when a child is charged with an act which would be a felony, and the child has previously been convicted of a felony or a non-traffic misdemeanor.

NOTE: there is a conflict between the juvenile court jurisdiction statute I.C. 31-30-1-2 and this presumptive waiver statute. It is the consensus of the Benchbook Committee that once a juvenile is alleged to have committed an act that would be a crime if committed by an adult and has previously been waived, the juvenile court no longer has jurisdiction.*["Once waived, always waived"]*

I.C. 31-30-1-2 Juvenile law not applicable to certain persons.

Except as provided in I.C. 33-5-29.5-4, I.C. 33-5-35.1-4, and section 8 [I.C. 31-30-1-8] of this chapter, the juvenile law does not apply to the following:

- (4) a child who:
 - (A) is alleged to have committed an act that would be a crime if committed by an adult; and
 - (B) has previously been waived under I.C. 31-30-3 (or I.C. 31-6-2-4 before its repeal) to a court having misdemeanor or felony jurisdiction.

G. **Jurisdiction/Waiver not necessary.** The Juvenile Court has no jurisdiction according to I.C. 31-30-1-4 over the following situations an individual 16 years of age or older for an alleged violation of:

- (1) I.C. 35-42-1-1 (murder);
- (2) I.C. 35-42-3-2 (kidnapping)
- (3) I.C. 35-42-4-1 (rape);
- (4) I.C. 35-42-4-2 (criminal deviate conduct)
- (5) I.C. 35-42-5-1 (robbery), if:
 - (A) it was committed while armed with a deadly weapon; or
 - (B) it results in bodily injury or serious bodily injury;
- (6) I.C. 35-42-5-2 (carjacking);
- (7) I.C. 35-45-9-3 (criminal gang activity)
- (8) I.C. 35-45-9-4 (criminal gang intimidation)
- (9) I.C. 35-47-2-1 (carrying a handgun without a license)
- (10) I.C. 35-47-10 (children and firearms)
- (11) I.C. 35-47-5-4.1 (dealing in a sawed-off shotgun);
- (12) I.C. 35-48-4-1 (dealing in cocaine or a narcotic drug);

- (13) I.C. 35-48-4-2 (dealing in a schedule I, II, or III controlled substance);
- (14) I.C. 35-48-4-3 (dealing in a schedule IV controlled substance); or
- (15) Any offense that may be joined [under I.C. 35-34-1-9 (a)(2)] with the crime listed in subdivisions (1) through (14).

The foregoing offenses including aiding and abetting such crimes, but excluding attempt and conspiracy, are not subject to waiver. The age 16 requirement pertains to all crimes excluded from juvenile jurisdiction under I.C. 31-30-1-4. **Caldwell v. State**, 452 N.E.2d 278 (Ind. 1983) and **State ex rel. Camden v. Gibson Circuit Court**, 640 N.E.2d 696 (Ind.1994).

H. Time limitation A motion to waive juvenile jurisdiction may not be made or granted after child has admitted allegations of petition at initial hearing or first witness has been sworn at fact-finding hearing. See I.C. 31-30-3-7.

I. Findings of Fact Waiver order must include specific findings of fact to support the order. See I.C. 31-30-3-10.

J. Bond If waiver is granted the juvenile court shall order child held for proceedings in the adult court and may fix recognizance bond. I.C. 31-30-3-8.

II. PROCEDURE: Waiver Of Juvenile Jurisdiction

A. Petition: After formal juvenile jurisdiction is obtained, the prosecuting attorney may petition the court for waiver of juvenile jurisdiction. Therefore, the court should set the hearing on the petition for waiver.

USE FORM D-7.02 for any "Non-Presumptive Waiver".

USE FORM D-7.04 for Non-Presumptive Waiver on "Controlled Substances Felony".

[Note: if violation is a Class A or B Felony, Presumptive Waiver may be sought, and Form D-7.08 used instead.]

USE FORM D-7.06 for "Presumptive Waiver - Murder".

USE FORM D-7.08 for "Presumptive Waiver - Class A or B felony, or following Class C felonies: Involuntary Manslaughter, I.C. 35-42-1-4, or Reckless Homicide, I.C. 35-42-1-5".

USE FORM D-7.10 for Waiver of "Child Previously Convicted of Felony or Nontraffic Misdemeanor, I.C. 31-30-3-6".

B. Advisement of Rights and Right to Counsel The juvenile must be advised of his rights and an attorney should be appointed in the order setting the initial hearing on the waiver motion. See Delinquency Chapter 6 of this Benchbook.

Hearing on Waiver Petition. The hearing on a waiver petition should be treated as a probable cause hearing wherein the court must make specific findings of fact as required in I.C. 31-30-3-10. Since no motion to waive juvenile jurisdiction may be made or granted after the child has admitted the allegations in the petition at the initial hearing, the Benchbook Committee recommends that no admission by the juvenile at the initial hearing should be solicited or accepted until the court has first determined the prosecutor's intention as to wa-

iver.

D. Court Findings. Findings and an order must be entered based on guidelines set forth in the code and applicable cases.

USE FORM D-7.03 for "Non-Presumptive Waiver".

USE FORM D-7.05 or Non-Presumptive Waiver for "Controlled Substances Felony".

USE FORM D-7.07 for "Presumptive Waiver - Murder".

USE FORM D-7.09 for Presumptive Waiver - Class A or B felony, or following Class C felonies: Involuntary Manslaughter, I.C. 35-42-1-4, or Reckless Homicide, I.C. 35-42-1-5.

USE FORM D-7.11 for "Presumptive Waiver - Child Previously Convicted of Felony or Non-traffic Misdemeanor, I.C. 31-30-3-6."

E. Waiver Denied If waiver of juvenile jurisdiction is not granted: USE FORM D-7.12, "Order Denying Waiver."

III. CASE NOTES ON WAIVER

A. Jurisdiction

It is a prerequisite for waiver of juvenile jurisdiction that juvenile court acquire jurisdiction. **Taylor v. State**, 438 N.E.2d 275 (Ind. 1982); [**Seay v. State**, **Duty v. State**, **Murphy v. State**, etc. referred to in Scope Note I-E].

Investigation and hearing regarding waiver of juvenile court jurisdiction for child charged with act that would be murder if committed by adult is not a perfunctory proceeding, but rather is one intended to protect the full panoply of rights provided by State and Federal Constitutions. **Vance v. State**, 640 N.E.2d 51 (Ind. 1994).

Statutory presumption of waiver of juvenile jurisdiction with respect to *juveniles charged with murder* applies with respect to any charged felony which would be a lesser included offense of an indictment or information charging murder. **Trotter v. State**, 429 N.E.2d 637 (Ind. 1981).

A waiver hearing in juvenile court was not necessary when the juvenile charged with felony murder arising out of a burglary was convicted of burglary in adult court. **Douglas v. State**, 466 N.E.2d 421 (Ind. 1984).

The waiver hearing should be held within 20 working days of the filing of a delinquency petition. **Tacy v. State**, 452 N.E.2d 977 (Ind. 1983). *See also*: IC 31-6-7-6. However, if not so held, the juvenile is only entitled to release from detention, the juvenile court does not lose jurisdiction, and the juvenile is not entitled to discharge. **Spikes v. State**, 460 N.E.2d 957 (Ind. 1984).

The crime charged in a delinquency petition does not have to be charged with the degree of precision as required in a criminal case and the criminal court to which a waiver is granted may permit the information to be amended, without a new waiver. **Smith v. State**, 459 N.E.2d 355 (Ind. 1984).

If waiver is not granted, further proceedings must be held under Juvenile Code. **Partlow v. State**,

453 N.E.2d 259 (Ind. 1984).

Circuit Court, which failed to transfer cause as to theft count to its juvenile docket, never acquired juvenile jurisdiction over defendant and, thus, could not waive juvenile jurisdiction and obtain adult criminal jurisdiction over defendant, who was also charged with exempted counts dealing with operation of motor vehicles, so that subsequent adult criminal proceedings on theft count were null and void. **Kindred v. State**, 493 N.E.2d 467 (Ind. Ct. App., 1986).

Conspiracy was not included offense to burglary charge and where it was not considered by juvenile court nor waived by it, criminal court had no jurisdiction to try juvenile on that charge. **Harris v. State**, 398 N.E.2d 1346 (Ind. Ct. App., 1980).

Accessory liability can apply to statute providing for waiver of jurisdiction by juvenile court, even though statute does not specify accessories. **Tingle v. State**, 632 N.E.2d 345 (Ind.1994).

Purpose of a hearing to waive juvenile jurisdiction is to assist the court in making findings concerning its jurisdiction, which does not depend on guilt or innocence of the offense charged. **Trotter v. State**, 429 N.E.2d 637 (Ind. 1981).

NOTE: Regarding discharge based on time delay/State's capacity to seek continuance, See I.C. 31-37-11.

B. Right to Counsel

Failure to appoint counsel to represent 17-year-old defendant prior to hearing on motion to waive jurisdiction of juvenile court was error regardless of who might ultimately pay for cost of appointment and was such as to make waiver unlawful and require reversal of conviction obtained in superior court subsequent to waiver. **Adams v. State**, (Ind. Ct. App., 1980), 411 N.E.2d 160.

A seventeen year old defendant was allowed meaningful consultation with his parent "in private for approximately twenty minutes," although the juvenile remained in an interrogation room three hours before his father arrived and his father advised him to cooperate with the police. **Harden v. State**, 576 N.E.2d 590 (Ind. 1991).

A seventeen year old juvenile made a confession and signed a waiver of rights form with his custodian, his grandmother. The Supreme Court indicated that since the grandmother was, "a person with whom the child resides," she was eligible to serve as his "custodian" for purposes of the juvenile waiver statute. **Tingle v. State**, 632 N.E.2d 345 (Ind.1994).

C. Burden of Proof

In "Presumptive Waiver" cases it has been held that the burden is upon the child to establish that "it would be in the best interests of the child and of the safety and welfare of the community for him to remain with the juvenile justice system." **Hagen v. State**, 682 N.E. 2d 1292 (Ind. Ct. App. 1996).

In cases of waiver of jurisdiction by juvenile court, the state need only prove by a preponderance of evidence that prerequisites to waiver exist. **Jonaitis v. State**, 437 N.E.2d 140 (Ind. Ct. App., 1982);

Matter of Tacy, 427 N.E.2d 919 (Ind. Ct. App., 1981).

"Probable cause" exists when the facts and circumstances within an officer's knowledge, which are based upon reasonably trustworthy information, are sufficient to warrant a reasonable man's belief that a crime has been or is being committed. This standard requires more than a mere suspicion, but does not require proof beyond a reasonable doubt. **Strosnider v. State**, 422 N.E.2d 1325 (Ind. Ct. App., 1981); **Trotter v. State**, 429 N.E.2d 637 (Ind. 1981).

The burden is on the state to prove the prerequisites to waiver by a preponderance of evidence. **Taylor v. State**, 438 N.E.2d 275 (Ind. 1982). **Matter of Tacy**, 427 N.E.2d 919 (Ind. Ct. App., 1981); **Jonaitis v. State**, 437 N.E.2d 140 (Ind. Ct. App., 1982).

D. Evidence

Admission of a juvenile confession made in another state is determined under Indiana confession rules, not the other state's rules. **Stidham v. State**, 608 N.E.2d 699 (Ind.1993).

A probable cause determination at an earlier phase of the case may be judicially noticed by the court on a waiver hearing, particularly if the juvenile was represented by the same attorney at the earlier hearing, but the better practice is to introduce the evidence again at the waiver hearing. **Gerrick v. State**, 451 N.E.2d 327 (Ind. 1983).

The Court of Appeals has held that hearsay evidence may be considered in a waiver hearing. **Moore v. State**, 723 N.E. 2d 442 (Ind. Ct. App. 2000).

E. Findings

If juvenile jurisdiction is waived, I.C. 31-30-3-10 requires that waiver order to include "**specific findings of fact to support the order.**"

The waiver order should *set forth specific findings of fact and not merely recite statutory language*. On appeal, the record of the waiver hearing may be used to supplement the reasons for waiver set forth in the waiver order. Support in reason and fact for waiver must appear in either the waiver order or the record of the waiver hearing. **Hagan v. State**, 682 N.E. 2d 1292 (Ind. Ct. App. 1996); **Gerrick v. State**, 451 N.E.2d 327 (Ind. 1983); **Jonaitis v. State**, 437 N.E.2d 140 (Ind. Ct. App., 1982); **Matter of Tacy**, 427 N.E.2d 919 (Ind. Ct. App., 1981); **Strosnider v. State**, 422 N.E.2d 1325 (Ind. Ct. App., 1981).

"Refusal to grant waiver affirmed. . .the juvenile court is entitled to give whatever weight it deems appropriate to testimony concerning the best interest of the child and the community." **State v. Gorzelanny**, 468 N.E.2d 589 at 591 (Ind. Ct. App., 1984).

In a "presumptive waiver" case the record need only show probable cause to believe that the juvenile has committed the felony charged and that the juvenile was of the age required by the presumptive waiver statute at the time of the commission. **Trotter v. State**, 429 N.E.2d 637 (Ind. 1981); **Taylor v. State**, 438 N.E.2d 275 (Ind. 1982).

In "non-presumptive" cases the juvenile court must find that the case against the juvenile has prosecutive merit; that the child is beyond rehabilitation in the juvenile system; that the public welfare would be best served by waiving jurisdiction; and that the act is heinous or of aggravating character or is part of a repetitive pattern of acts. **Matter of Tacy**, 427 N.E.2d 919 (Ind. Ct. App., 1981).

It is error to dismiss a delinquency petition, following a denial of waiver, without a fact-finding hearing. **State v. Gorzelanny**, 468 N.E.2d 589 (Ind. Ct. App., 1984).

A fourteen year old juvenile was properly waived and sentenced in a murder and felony-murder case, when the waiver order merely contained a stamped, rather than a handwritten judge's signature with the court staff's initials underneath the signature imprint. The record indicates that a court made a decision based on the evidence that the juvenile should be waived and tried on murder and felony-murder. **Thomas v. State**, 562 N.E.2d 43 (Ind. Ct. App., 1990).

Note: The Benchbook Committee discourages the use of signature stamps!

According to Ind. Code 31-31-3-6, the juvenile judge may delegate the responsibilities of submitting findings and recommendations to the juvenile referee. In this case, "the juvenile referee presided over the waiver hearing and adopted proposed findings of fact which the juvenile judge subsequently adopted . . ." Id. at 46. **Thomas v. State**, 562 N.E.2d 43 (Ind. Ct. App., 1990).

For [Nonpresumptive] waiver of jurisdiction, juvenile court must find that case against juvenile has prosecutive merit, that child is beyond rehabilitation in juvenile system, that public welfare would be best served by waiving jurisdiction, and that act is heinous or of aggravated character or is part of repetitive pattern of acts. **Matter of Tacy**, 427 N.E.2d 919 (Ind. Ct. App., 1981).

Due process requires statement of reasons, including relevant facts, underlying waiver from juvenile jurisdiction and such statement must not merely recite statutory language. **Daniel v. State**, 582 N.E.2d 364 (Ind.1991), *rehearing denied, certiorari denied* 113 S.Ct. 116, 506 U.S. 838, 121 L.Ed.2d 72.

It is not necessary for court to recount all possible alternative juvenile dispositions available to it before concluding none are appropriate and waiving minor from juvenile to criminal court. **Strosnider v. State**, 422 N.E.2d 1325 (Ind. Ct. App., 1981).

Juvenile court is entitled to give whatever weight it deems appropriate to testimony concerning best interests of child and community, and in view of testimony from two clinical psychologists, juvenile court probation and intake officer and social worker with prisoner outreach program, juvenile court did not abuse discretion in finding that juvenile was not danger to community and that community's interests were best served with him in the juvenile court as opposed to State's waiver petition. **State v. Gorzelanny**, 468 N.E.2d 589 (Ind. Ct. App., 1984).

The waiver hearing cannot involve any adjudication or findings of delinquency, else waiver will result in double jeopardy; however, the finding must include a finding of probable cause. **Walker v. State**, 349 N.E.2d 161 (Ind. 1976) cert. den. 429 U.S. 943, 97 S. Ct. 363, 50 L. Ed. 2d 313; **Murphy v. State**, 364 N.E.2d 779 (Ind. 1977); **Taylor v. State**, 438 N.E.2d 275 (Ind. 1982); **State**

v. Gorzelanny, 468 N.E.2d 589 (Ind. Ct. App., 1984).

NOTE: For findings required under *prior waiver statute* see: **Summer v. State**, 230 N.E.2d 320 (Ind. 1967); **Atkins v. State**, 290 N.E.2d 441 (Ind. 1972); **State v. Jump**, 309 N.E.2d 148 (Ind. Ct. App., 1974); **Clemons v. State**, 317 N.E.2d 859 (Ind. Ct. App., 1974); **Imel v. State**, 342 N.E.2d 897 (Ind. Ct. App., 1974); **Seay v. State**, 337 N.E.2d 489 (Ind. Ct. App., 1975), Rehearing 340 N.E.2d 369 (Ind. Ct. App., 1975); **Cartwright v. State**, 344 N.E.2d 83 (Ind. Ct. App., 1976); and **Gregory v. State**, 386 N.E.2d 675 (Ind. 1979).

F. Review

Supreme Court reviews juvenile court's decision to waive jurisdiction only for abuse of discretion. **Vance v. State**, 640 N.E.2d 51 (Ind.1994).

Record and order waiving juvenile to adult criminal court must allow meaningful review which is not based on assumptions about state of mind of judge. **Thomas v. State**, 562 N.E.2d 43 (Ind. Ct. App., 1990).

STATE OF INDIANA

____ COURT

In The Matter Of _____

____ Case

No. _____
 A Child Alleged to be a Delinquent Child

**PROSECUTOR'S MOTION FOR WAIVER OF JUVENILE JURISDICTION
 [(I.C. 31-30-3-2)]**

The State of Indiana, by the undersigned Deputy/Prosecuting Attorney, hereby alleges and represents to the Court as follows:

(1) That said child, _____, was born _____ and was fourteen (14) years of age or older, and under eighteen (18) years of age, at the time of the charged offense.

(2) That said child is subject to the jurisdiction of the Juvenile Court herein by virtue of a Petition Alleging Delinquency having been filed on _____.

(3) That the act charged would be an offense if committed by an adult, to-wit:

(4) That said offense charged is:

() heinous or of an aggravated character [*state why*]:

() part of a repetitive pattern of offenses (even though less serious in nature) in that child has heretofore been arrested and/or adjudicated for:

(5) that there is probable cause to believe that said child committed the offense charged herein, that said child is beyond rehabilitation under the juvenile justice system, it is the best interest of the safety and welfare of the community that child be required to stand trial as an adult, and that waiver of juvenile jurisdiction is sought under the provisions of I.C. 31-30-3-2.

WHEREFORE, your petitioner requests that a hearing be set by the Court to determine whether juvenile jurisdiction should be waived herein, that after said hearing that the Court waive juvenile jurisdiction over the offense charged herein to the _____ Court of _____ County, a Court that would have jurisdiction over the offense if that act were

committed by an adult, and said waiver to be for the offense charged, and any lesser included offense.

Dated: _____

Deputy /Prosecuting Attorney for the _____ Judicial
Circuit of Indiana

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

WAIVER ORDER

[I.C. 31-30-3-2]

The State of Indiana appears by _____ Deputy/Prosecuting attorney. The child, _____, and child's parent(s), _____, appear in person and by _____, attorney. Also, (Intake Officer) _____, appears.

The Court having heard and considered the Prosecutor's motion for waiver of juvenile jurisdiction under the provisions of I.C. 31-30-3-2, and the Court being duly advised in the premises, the Court now makes the following findings of fact:

(1) That said child, was fourteen (14) years of age or older, and under eighteen (18) years of age, at the time of the charged offense.

(2) Said child is subject to the jurisdiction of the Juvenile Court by virtue of a Petition Alleging Delinquency having been filed on _____.

(3) The act charged would be an offense if committed by an adult, to wit: _____

(4) That said offense charged is:

() heinous or of an aggravated character: *[Enter specific findings here:]*

() part of a repetitive pattern of offenses (even though less serious in nature) in that child has heretofore been arrested and/or adjudicated for: *[Enter specific findings here:]*

(5) That there is probable cause to believe that said child committed said offense.

(6) That said child is beyond rehabilitation under the juvenile justice system in that the child has heretofore had available to him and/or made use of the following

rehabilitative programs: *[Enter specific findings here:]*

and that it is in the best interests of the safety and welfare of the community that he stand trial as an adult.

It is therefore adjudged and ordered that juvenile jurisdiction over this case be and the same hereby is waived to the _____ Court of _____ County, a Court that would have jurisdiction over the act charged therein if the act were committed by an adult, and said waiver being granted for the offense charged and any lesser offense included therein.

It is further ordered and adjudged that:

- () Recognizance bond for said child to answer in said Court is hereby fixed in the sum of \$_____, and said child is remanded to the custody of the Sheriff of _____ County, Indiana, unless sooner released upon such recognizance bond or in an amount as may be hereinafter set by order of the Court to which said child is waived.
- () Court continues the appointment of the Public Defender's Office to represent the interests of the child
- () That said child be released upon the recognizance of said child and child's parents, guardian, or custodian to produce said child in said Court to which jurisdiction is waived.

Dated: _____

Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**PROSECUTOR'S MOTION FOR WAIVER OF JUVENILE JURISDICTION
ON CONTROLLED SUBSTANCES FELONY
[I.C. 31-30-3-3]**

The State of Indiana, by the undersigned Deputy/Prosecuting Attorney, hereby alleges and represents to the Court as follows:

(1) That said child, _____, was born _____ and was sixteen (16) years of age or older, and under eighteen (18) years of age, at the time of commission of the alleged offense.

(2) That said child is subject to the jurisdiction of the Juvenile Court herein by virtue of a Petition Alleging Delinquency filed on _____.

(3) That the act charged would be a felony under I.C. 35-48-4 if committed by an adult.

(4) That there is probable cause to believe that said child committed the offense charged herein, and that it is in the best interests of the safety and the welfare of the community for the child to stand trial as an adult, and that waiver of juvenile jurisdiction is sought under the provisions of I.C. 31-30-3-3.

WHEREFORE, your petitioner requests that a hearing be set by the Court to determine whether juvenile jurisdiction should be waived herein, and that after said hearing that the Court waive juvenile jurisdiction over the offense charged herein to the _____ Court of _____ County, a Court that would have jurisdiction over the offense if that at were committed by an adult, and said waiver to be for the offense charged and any lesser included offense.

Dated: _____

Deputy/Prosecuting Attorney for the _____

Judicial Circuit of Indiana

STATE OF INDIANA

____ COURT

In The Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

WAIVER ORDER

[I.C. 31-30-3-3]

The State of Indiana appears by _____,
Deputy/Prosecuting Attorney. The child, _____, and child's parent(s),
_____, appear in person and by _____,
attorney. Also, (Intake Officer), _____, appears.

The Court having heard and considered the Prosecutor's motion for waiver of juvenile jurisdiction under the provisions of I.C. 31-30-3-3, and the Court being duly advised in the premises, the Court now makes the following findings of fact:

(1) That said child, was sixteen (16) years of age or older, and under eighteen (18) years of age, at the time of commission of the charged offense.

(2) Said child is subject to the jurisdiction of the Juvenile Court by virtue of a Petition Alleging Delinquency filed on _____.

(3) That the act charged would be a felony under I.C. 35-48-4 if committed by an adult, to-wit: [*State the felony*]

(4) That there is probable cause to believe that said child committed the offense charged herein, and that it is in the best interests of the safety and the welfare of the community for the child to stand trial as an adult, to-wit: [*Enter findings in support of this conclusion here:*]

It is therefore adjudged and ordered that juvenile jurisdiction over this cause be and the and same hereby is waived to the _____ Court of _____ County, a Court that would have jurisdiction over the act charged therein if the act were committed by an adult, and said waiver being granted for the offense charged and any lesser offense included therein.

It is further ordered and adjudged that:

- () Recognizance bond for said child to answer in said Court is hereby fixed in the sum of \$ _____, and said child is remanded to the custody of the Sheriff of _____ County, Indiana, unless sooner released upon such recognizance bond or in an amount as may be hereinafter set by order of the Court to which said child is waived.

- () Court continues the appointment of the Public Defender's Office to represent the interests of the child
- () That said child be released upon the recognizance of said child and child's parent(s), guardian, or custodian to produce said child in said Court to which jurisdiction is waived.

Dated: _____

Judge

STATE OF INDIANA

COURT

In The Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

PROSECUTOR'S MOTION FOR WAIVER OF JUVENILE JURISDICTION

[I.C. 31-30-3-4]

The State of Indiana by the undersigned Deputy/Prosecuting Attorney, hereby alleges and represents to the Court as follows:

(1) That said child, _____, was born _____ and was ten (10) years of age or older and under sixteen (16) years of age, at the time of the charged offense.

(2) That said child is subject to the jurisdiction of the Juvenile Court herein by virtue of a Petition Alleging Delinquency having been filed on _____.

(3) That the said child is charged with an act that would be Murder if committed by an adult.

(4) There is probable cause to believe said child has committed said act.

WHEREFORE, your petitioner requests that a hearing be set by the Court to determine whether juvenile jurisdiction should be waived herein, and that after said hearing that the Court waive juvenile jurisdiction over the offense charged herein to the _____ Court of _____ County, a Court that would have jurisdiction over the offense charged if the act were committed by an adult, and said waiver to be for the offense charged and any lesser included offense.

Dated: _____

Deputy/Prosecuting Attorney for the _____

Judicial Circuit of Indiana

STATE OF INDIANA

____ COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

WAIVER ORDER**[I.C. 31-30-3-4]**

The State of Indiana appears by _____,
Deputy/Prosecuting Attorney. The child, _____, and child's parent(s),
_____, appear in person and by _____,
attorney. Also, (Intake Officer) _____ appears.

The Court having heard and considered the Prosecutor's motion of waiver of juvenile jurisdiction under the provisions of I.C. 31-30-3-4, and the Court being duly advised in the premises, the Court now makes the following findings of fact:

(1) That said child was ten (10) years of age or older, and under sixteen (16) years of age at the time of the charged offense.

(2) Said child is subject to the jurisdiction of the Juvenile Court by virtue of a Petition Alleging Delinquency filed on _____.

(3) That said child is charged herein with an act that would be Murder if committed by an adult.

(4) That there is probable cause to believe that said child committed said offense.

(5) The Court has not found from the evidence that it would be in the best interest of the child and the safety and welfare of the community for him to remain within the juvenile justice system.

It is therefore adjudged and ordered that juvenile jurisdiction over this case be and the same hereby is, waived to the _____ Court of _____ County, a Court that would have jurisdiction over the act charged herein if the act were committed by an adult and said waiver being granted for the offense of murder as charged herein and any lesser included offense.

It is further ordered and adjudged that said child is remanded to the custody of the Sheriff of _____ County, Indiana to be held under this order, **without bail or recognizance**, unless sooner released under such recognizance bond or in an amount as may be hereinafter set by order of the Court to which said child is waived.

- () Court continues the appointment of the Public Defender's Office to represent the interests of the child

Dated: _____

Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

PROSECUTOR'S MOTION FOR WAIVER OF JUVENILE JURISDICTION
[I.C. 31-30-3-5]

The State of Indiana, by the undersigned Deputy/Prosecuting Attorney, hereby alleges and represents to the Court as follows:

- (1) That said child, _____, was born _____ and was sixteen (16) years of age or older, and under eighteen (18) years of age, at the time of commission of the alleged offense.
- (2) That said child is subject to the jurisdiction of the Juvenile Court herein by virtue of a Petition Alleging Delinquency filed on _____.
- (3) That the offense charged is _____:
- () a Class A felony, except a felony defined by I.C. 35-38-4.
 - () a Class B felony, except a felony defined by I.C. 35-38-4.
 - () Involuntary manslaughter (I.C. 35-42-1-4) or reckless homicide (I.C. 35-42-1-5) charged as a Class C felony. *(Strike inapplicable citation)*
- (4) That there is probable cause to believe that said child committed said act.

WHEREFORE, your petitioner requests that a hearing be set by the Court to determine whether juvenile jurisdiction should be waived herein, and that after said hearing that the Court waive juvenile jurisdiction over the offense charged herein to the _____ Court of _____ County, a Court that would have jurisdiction over the offense if that act were committed by an adult, and said waiver be for the offense charged and any lesser included offense.

Dated: _____

Deputy/Prosecuting Attorney for the _____
Judicial Circuit of Indiana

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

WAIVER ORDER

[I.C. 31-30-3-5]

The State of Indiana appears by _____,
Deputy/Prosecuting Attorney. The child, _____, and child's
parent(s), _____, appear in person and by _____,
attorney. Also (Intake Officer) _____, appears.

The Court having heard and considered the Prosecutor's motion for waiver of juvenile jurisdiction under the provisions of I.C. 31-30-3-5, and the Court being duly advised in the premises, the Court now makes the following findings of fact:

(1) That said child was sixteen (16) years of age or older, and under eighteen (18) years of age, at the time of the charged offense.

(2) Said child is subject to the jurisdiction of the Juvenile Court by virtue of Petition Alleging Delinquency filed on _____.

(3) That the offense charged is _____:
 () a Class A felony, except a felony defined by I.C. 35-38-4.
 () a Class B felony, except a felony defined by I.C. 35-38-4.
 () Involuntary manslaughter (I.C. 35-42-1-4) or reckless homicide (I.C. 35-42-1-5) charged as a Class C felony. (*Strike inapplicable citation*)

(4) That there is probable cause to believe that said child committed said offense.

(5) The Court has not found from the evidence that it would be in the best interest of the child and the safety and welfare of the community for him to remain within the juvenile justice system.

It is therefore adjudged and ordered that juvenile jurisdiction over this case be and the same hereby is, waived to the _____ Court of _____ County, a Court that would have jurisdiction over the act charged if the act were committed by an adult, said waiver being granted for the offense charged and any lesser offense included therein.

It is further ordered and adjudged that:

- () Recognizance bond for said child to answer to said Court is hereby fixed in the sum of \$ _____, and said child is remanded to the custody of the Sheriff of _____ County, Indiana, unless sooner released under such recognizance bond or in an amount as may be hereinafter set by order of the Court to which said child is waived.
- () Court continues the appointment of the Public Defender's Office to represent the interests of the child.
- () That said child be released upon the recognizance of said child and child's parent(s), guardian or custodian to produce said child in said Court to which jurisdiction is waived.

Dated: _____

Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**PROSECUTOR'S MOTION FOR PRESUMPTIVE WAIVER OF JUVENILE
JURISDICTION OVER CHILD PREVIOUSLY CONVICTED OF FELONY
OR NON-TRAFFIC MISDEMEANOR**

[I.C. 31-30-3-6]

The State of Indiana, by the undersigned Deputy/Prosecuting Attorney, hereby alleges and represents to the Court as follows:

(1) That said child, _____, was born _____ and was under eighteen (18) years of age at the time of commission of the alleged offense.

(2) That said child is subject to the jurisdiction of the Juvenile Court herein by virtue of a Petition Alleging Delinquency filed on _____.

(3) That the act charged would be a felony if committed by an adult.

(4) That there is probable cause to believe said child committed said act.

(5) That on the _____ day of _____, 20____, in the _____ Court in the State of _____, said child was previously convicted of a felony or non-traffic misdemeanor, to-wit: *[State the felony or non-traffic misdemeanor and Class Felony/Misdemeanor here:]*

WHEREFORE, your petitioner requests that a hearing be set by the Court to determine whether juvenile jurisdiction should be waived herein, and that after said hearing that the Court waive juvenile jurisdiction over the offense charged herein to the _____ Court of _____ County, a Court that would have jurisdiction over the offense if that act were committed by an adult, and said waiver to be for the offense charged and any lesser included offense.

Dated: _____

Deputy/Prosecuting Attorney for the _____
Judicial Circuit of Indiana

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

WAIVER ORDER

[I.C. 31-30-3-6]

The State of Indiana appears by _____, Deputy/Prosecuting Attorney. The child, _____, and child's parent(s) _____ appear in person and by _____, attorney. Also, (Intake Officer), _____, appears.

The Court having heard and considered the Prosecutor's motion for waiver of juvenile jurisdiction under the provisions of I.C. 31-30-3-6, and the Court being duly advised in the premises, the Court now makes the following findings of fact:

(1) That said child, _____, was born _____ and was under eighteen (18) years of age at the time of commission of the alleged offense.

(2) Said child is subject to the jurisdiction of the Juvenile Court by virtue of a Petition Alleging Delinquency filed on _____.

(3) That the act charged would be a felony if committed by an adult.

(4) That there is probable cause to believe that said child committed said act.

(5) That on the ____ day of _____, 20____, in the _____ Court in the State of _____, said child was previously convicted of a felony or non-traffic misdemeanor, to wit: [*State the felony or non-traffic misdemeanor and Class Felony/Misdemeanor here:*]

It is therefore adjudged and ordered that juvenile jurisdiction over this cause be and the same hereby is waived to the _____ Court of _____ County, a Court that would have jurisdiction over the act charged therein if the act were committed by an adult, and said waiver being granted for the offense charged and any lesser offense included therein.

It is further ordered and adjudged that:

() Recognizance bond for said child to answer in said Court is hereby fixed in the sum of \$ _____, and said child is remanded to

the custody of the Sheriff of _____ County, Indiana, unless sooner released upon such recognizance bond or in an amount as may be hereinafter set by order of the Court to which said child is waived.

- () Court continues the appointment of the Public Defender's Office to represent the interests of the child.
- () That said child be released upon the recognizance of said child and child's parent(s), guardian, or custodian to produce said child in said Court to which jurisdiction is waived.

Dated: _____

Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER DENYING WAIVER

The State of Indiana appears by _____, Deputy/Prosecuting Attorney. The juvenile, _____, parent(s) _____, attorney. Also, (Intake Officer) _____, appears.

The Court having heard and considered the Prosecutor's motion for waiver of juvenile jurisdiction and being duly advised in the premises, now denies the petition for waiver.

Case set for Fact-finding Hearing on the _____ day of _____, 20____, at _____ M. and notice ordered.

Dated: _____

Judge

DIALOGUE FOR DETENTION HEARING
I.C. 31-37-6

COURT: Let the records show that this is a detention hearing being held this _____ day of _____, 20____. at _____ o'clock _____.M.

1. COURT: Will the child please state his/her full name, age and date of birth?

2. COURT: In regard to the detention of _____,
(name of juvenile)
a juvenile, present are _____.
(official persons)

Also present are:

3. COURT: Would the parents, guardians or custodians of the juvenile who are present please state their names and relationship to the child.

4. COURT: Mr./Mrs. _____, did your child give his/her correct name, age and date of birth?

5. COURT: Mr./Mrs. _____, what is your address and how long have you lived there?

6. COURT: Mr./Mrs. _____, does the child live there with you at this time?
(If not, where does the child live and with whom?)

7. COURT: Will all others present identify yourself by name and reason for being here and/or relationship to the child.

8. COURT: _____, when was the juvenile taken into custody?
(official person)

9. COURT: Let the record reflect this hearing is being timely held [See IC 31-37-6-2]. We are here today to determine several things. First, if probable cause has not already been found, we must determine whether there is probable cause to believe that the child is a delinquent child. A delinquent child is a person who, while less than eighteen (18) years of age, committed an act that would be an offense if committed by an adult, or committed a status offense and needs care, treatment or rehabilitation that he is not receiving and is unlikely to receive without the coercive intervention of the court. Status offenses are: runaway, truancy, curfew violation, or habitual disobedience.

Second, we are here to determine whether the child should be released from detention. To continue the child's detention, I must find:

1. that the child is unlikely to appear for subsequent proceedings,
2. detention is essential to protect the child or the community,
3. the parent, guardian, or custodian cannot be located or is unable or unwilling to take custody of the child, or
4. the child has a reasonable basis for requesting that he not be released.

Third, if I determine that the child should be continued in detention, I must then determine whether that detention should be a juvenile detention facility or a non-secure facility.

10. COURT (To child): Do you understand why we are here?

11. COURT: Are you (child) under the influence of any alcohol or drugs? (Parent or child may respond)

12. COURT: Has your child ever been treated for any mental or emotional disability?

13. COURT: Mr./Mrs. _____, do you understand why we are here?

NOTE: If any attorney present, skip paragraphs 14, 15, 16, 17, 18, 19, 20, 21 and 22.

14. COURT: You are entitled to be represented by an attorney. You may hire your own attorney, or, if you request, the court will appoint one for you. If the court does provide you with a court appointed attorney, the court must make a determination whether you should reimburse the county for all or part of the cost of the court-appointed attorney. Do you understand this right?

15. COURT: (to child) You also have a right not to testify against yourself at this hearing. Do you understand that right?

16. COURT: (to child): You have the right to remain silent, and anything you say may be used against you in later hearings. Do you understand that right?

17. COURT: The law [IC 31-32-5-1 and 2] also states that a child cannot waive his right to an attorney and that any waiver must be by the child's custodial parent, guardian or custodian, or a guardian ad litem. The child's custodial parent, guardian, custodian or guardian ad litem may waive the child's right to an attorney if they knowingly and voluntarily waive the right, have no interest against the child, meaningful consultation has occurred between them and the child, and if the child knowingly and voluntarily joins with the waiver. Now, Mr./Mrs. _____, do you have any interest in these proceedings against the child's best interest?

18. COURT: (to child): You have a right to have meaningful consultation with your parents. Do

you understand this right?

19. COURT: (to child): Now, I want you to take time to talk to your parents and decide whether or not you want an attorney at this hearing and whether you want the court to appoint an attorney for you for this hearing. (Pause.) Have you had a chance to talk with your parents?

20. COURT: (to child: Do you want an attorney here for this hearing?

21. COURT:(to child): Do you want me to appoint an attorney?

22. COURT: **(To parents, If the child has waived legal counsel),**
_____, do you agree with your child's decision to waive counsel?

If counsel is requested, state the following:

23. COURT: All right, the hearing is now continued to the ____ day of _____, 20____, at _____ o'clock ____M. and the child is remanded to the custody of _____ a juvenile detention facility/non-secure facility, pending such hearing and the court now appoints _____ as counsel for child and (official person) _____ is to forthwith notify said counsel per order entered pursuant to D-6.02. Hearing continued.

(Hearing resumes.)

24. COURT: **(If counsel is waived or is present):** _____, (If court has not already determined probable cause), please inform the court of your probable cause to believe that the child is a delinquent child.

25. COURT: _____, what prior contact has the child had with the (official person) juvenile justice system and what were the dispositions of those contacts?

26. COURT: _____, what are your recommendations to the court (official person) concerning whether the child should be released or detained, the type of detention, if he is to be detained, and any other orders that the court should make at this time?

27. COURT (to parents): _____, what suggestions can you give the court concerning detention at this time?

28. COURT (to attorney or child): Do you wish to say anything at this time concerning only the issue of detention?

29. COURT: The Court finds that probable cause exists (or has been previously found) that the child committed a delinquent act (that would be a crime if committed by adult/status offense). The Court further finds that detention of the child is necessary because (state the factual basis and one of the following conclusions:)

1. that the child is unlikely to appear for subsequent proceedings,
2. detention is essential to protect the child or the community,
3. the parent, guardian, or custodian cannot be located or is unable or unwilling to take custody of the child, or
4. the child has a reasonable basis for requesting that he not be released.

The Court further finds that continuation in the home would be contrary to the welfare of the child because

Reasonable efforts have been made/or an emergency exists such that reasonable efforts could not be made to prevent placement _____.

The Court hereby incorporates by reference all the reports and evidence received or admitted at this hearing.

See form D-1.06.

NOTE: Some courts advise the juvenile at this time that they may petition the court for an additional detention hearing.

**DIALOGUE FOR INITIAL HEARING
IC 31-37-12**

Note: The language in this dialogue meets a legal threshold. It is important to ensure that all participants understand the concepts underlying this dialogue.

1. COURT: Let the record show that this is an initial hearing in Case No. _____, entitled "In The Matter Of _____, a child alleged to be a delinquent child," held this _____ day of _____ pursuant to IC 31-37-12-2. Present are _____.
(names, identities and official positions of all persons.)

2. COURT (to child): Will you please state your full name, age and date of birth?

3. COURT: Would the parents, guardians or custodians of the juvenile who are present please state their names and relationship to the child?

4. COURT: (to parents): Did your child give his correct name, age and date of birth?

5. COURT (to parents): What is your address?

6. COURT (to parents): Does the child live there with you at this time? (If not, where does he live and with whom?)

7. COURT: Upon motion of _____, this court has authorized, and there has been filed, a petition alleging that _____ (name of child) is a delinquent child. _____, have you received a copy of the formal delinquency petition?

NOTE: If they have not seen the delinquency petition, deliver a copy to them at this time and allow them an opportunity to review the petition.

8. Court: Do you read, write and understand the English language?

9. Are you (child) under the influence of any alcohol or drugs? (Parent or child may respond)

10. Has your child ever been treated for any mental or emotional disability?

11. COURT (To child/parent): Have you now had time to review this petition?

At this time, the substantive portion of the Petition should be read.

12. COURT: This petition alleges that _____, (name of child) on or

about the _____ day of _____, 20____, committed a delinquent act, namely _____ (state the name of offense) which would be a (state class of offense if committed by an adult or status offense).

Do you understand the allegations?

NOTE: If an attorney is present, skip paragraphs numbered 13, 14, 15, 16, 17, 18 and 19.

13. COURT: You are entitled to be represented by an attorney. You may hire your own attorney, or, if you request, the court will appoint one for you. If the court does provide you with a court appointed attorney, the court must make a determination whether you should reimburse the county for all or part of the cost of the court-appointed attorney. Do you understand this right?

14. COURT: The law [IC 31-32-5-1 and 2] also states that a child cannot waive his right to an attorney and that any waiver must be by the child's custodial parent, guardian or custodian, or a guardian ad litem. The child's custodial parent, guardian, custodian or guardian ad litem may waive the child's right to an attorney if they knowingly and voluntarily waive the right, have no interest against the child, meaningful consultation has occurred between them and the child, and if the child knowingly and voluntarily joins with the waiver. Now, Mr./Mrs. _____, do you have any interest in these proceedings against the child's best interest?

15. COURT (to child/parent): In these proceedings, you have the following rights: to know the nature of the allegations against you; to be represented by an attorney; to have a speedy trial; to confront all witnesses against you; to cross-examine witnesses against you; the right to have the court order witnesses and evidence to appear on your behalf; to introduce evidence on your own behalf; to refrain from testifying against yourself; the right to remain silent; and to have the State prove that you committed the delinquent act charged beyond a reasonable doubt. (Child), _____ do you understand these rights?

16. COURT(to parent): Do you understand these rights of your child?

17. COURT: Does the State intend to seek a waiver to adult court?

NOTE: If the answer to paragraph 17 is "no", go on to paragraph 18. If the answer is "yes" a fact-finding hearing on the waiver petition must be set within 20 working days of the date of the filing of the delinquency petition or 60 days if the juvenile is not in detention.

18. COURT (to parent): I have informed you and your child of your child's rights in the proceedings. I must now inform you that if your child is adjudicated a delinquent child, you or the custodian of child may be required to participate in a program of care, treatment, or rehabilitation for the child, and you may be held financially responsible for any services provided for the child or yourselves. You are entitled to dispute any allegations made at the dispositional or other hearing concerning your participation, or concerning your financial

responsibility for any services that would be provided. You may submit your own plan for the child's rehabilitation for the court to consider. Do you understand this?

19. If the court finds the allegations in the petition are true, either by trial or by your admission, the court can, at disposition:

- a. Award wardship over you to the Indiana Department of Correction for housing in any correctional facility for juveniles or in a community based correctional facility for juveniles.

Note: If the child is eligible for determinate sentencing under the offense charged, the court should advise the child that he is subject to a commitment for a fixed period of time pursuant to IC 31-37-19-9 or 10.

- b. Place you in a juvenile detention facility:
If 16 years or younger, for up to ninety (90) days;
If 17 years or older, for up to 120 days.

NOTE: If the delinquent act would be a Class C misdemeanor if committed by an adult, then regardless of age, the maximum detention that can be ordered is (60) days.

- c. Remove you from your home and place you in another home or shelter care facility.
- d. Award wardship over you to any other person or shelter care facility.
- e. Place you in a secure private facility for children licensed under the laws of this state.
- f. Order a person who is a respondent in a protective proceeding of this chapter to refrain from direct or indirect contact with you.
- g. Require you to submit to HIV testing if you are convicted of certain sex and/or controlled substance offenses.

The court may also enter an order for:

- a. Supervision over you by the probation department (or the county office of family and children).
- b. Receipt of out-patient treatment at a social service agency, psychological, psychiatric, medical or educational facility, or from an individual practitioner.
- c. You to surrender your driver's license to the Court for a specified period of time.
- d. You to pay restitution to the crime victim if the victim provides reasonable

evidence of loss which you could question at the dispositional hearing.

- e. Partial or complete emancipation.
- f. You to attend an alcohol or drug service program.
- g. You to perform community service for a specified period of time.

In addition, the Court can order you to pay probation user fees and court costs.

NOTE: THE FOLLOWING DIALOGUE CAN BE SUBSTITUTED ONLY IF THE JUVENILE IS A STATUS OFFENDER.

- a. I could order you to receive supervision by the probation department (or the county welfare department).
- b. I could order you to receive out-patient treatment at a social service agency, or a psychological, psychiatric, medical or educational facility, or from an individual practitioner.
- c. I could remove you from your home and place you in another home or shelter care facility.
- d. I could award wardship over you to any other person or shelter care facility.
- e. I could partially or completely emancipate you.
- f. I could order you or your parent, guardian or custodian to receive family services.
- g. (If juvenile is a runaway or truant, add the following:)
The court can place you in a non local secure private facility, a local secure private facility, a local secure public facility, a local alternative facility approved by the juvenile court or with the Department of Correction.

20. COURT (to child): Do you have any questions about what the Court could do?

21. COURT (to child): You have a right to have meaningful consultation with your parents. Do you understand this right?

22. COURT (to child): Now, I want you to take time to talk to your parents and decide whether or not you want an attorney at this hearing and whether you want me to appoint an attorney for you for this hearing. (Pause) Have you had a chance to talk with your parents?

23. COURT (to child): Do you want an attorney here for this hearing?

If child waives attorney, ask parents if they agree with child's decision.

NOTE: If an attorney is requested or appointed, then state the following:

24. COURT: All right, the hearing is now continued to the ____ day of _____, 20 ____, at ____ o'clock ____ M. (no more than sixty (60) days excluding Saturdays, Sundays and legal holidays) which hearing shall be a fact-finding hearing and the court now appoints _____ as counsel for juvenile and _____ is to _____ (official person) forthwith notify counsel of said hearing date. See Form D-6.02. Hearing continued.

25. COURT(to child): I now need to know if you admit or deny allegations of the petition. If you admit the allegations, you are waiving all of your rights that I have read to you. You will be testifying against yourself. You will not have a fact finding hearing. Do you understand this?

26. COURT: Have you had a chance to consult with your parent and/or attorney about the charge, your rights and the possible dispositions?

27. COURT: Are you ready to admit or deny the allegations at this time?

28. COURT: Do you admit or deny the allegations?

[After admission, place juvenile under oath]

NOTE: If the juvenile denies the allegations, skip paragraphs 29 through 37.

NOTE: Questions 29 through 33 are optional and are to be asked of the child only if the juvenile is of an age of understanding.

29. COURT: Have you or anyone else received or been given anything of value to induce you to admit the allegations?

30. COURT: Have you or anyone else been offered any leniency or special treatment to induce you to admit the allegations?

31. COURT: Has anyone forced or threatened or placed you or anyone else in fear to induce you to admit the allegations?

32. COURT: Do you feel that your admission is of your own free will and voluntary act?

33. COURT: Are you satisfied with your attorney and do you feel that he/she is properly representing you?

34. COURT: Do you still want to admit the allegations?

NOTE: If the juvenile wishes to withdraw his admission and enter a denial, enter record pursuant to D-6.06 (Order on Initial Hearing: Denial of Delinquency).

35. COURT: By admitting the acts of delinquency, is it true that you are telling me that you did commit the acts alleged in the petition that I read to you?
PLACE CHILD UNDER OATH.

36. COURT: Tell me in your own words what happened as it concerns the acts of delinquency alleged in the petition.
(The juvenile should then give a narrative of all elements to establish a factual basis for each essential element of the delinquent act. The court may need to ask leading questions to insure compliance.)

37. COURT: Court now finds a factual basis and accepts the juvenile respondents's admission of juvenile delinquency petition. The Court now adjudicates the juvenile respondent a delinquent child. The Court orders the probation department to prepare and file a predispositional report and the court schedules a dispositional hearing in this case for the _____ day of _____, 20____ at _____ am/pm.

NOTE: If the Court accepts the admission, and if all parties agree to proceed immediately to disposition, the court may hold a dispositional hearing.

NOTE: If the minor was unable to state a narrative of all facts necessary to establish the offense, the Court should enter a denial on behalf of the child and set the case for a fact finding hearing.

FACT-FINDING HEARINGS

I. Fact-finding hearing:

A. The Court shall hold a fact-finding hearing unless the allegations of a petition have been admitted. I.C. 31-37-13-1. The juvenile does not have a right to trial by jury at the delinquency hearing. **Bible v. State**, 254 N.E. 2d 319 (Ind. 1970).

II. Time for fact-finding hearing

A. If a child is in detention, fact-finding or waiver hearing must be held no later than twenty (20) days after petition is filed, excluding Saturdays, Sundays, and legal holidays. I.C. 31-37-11-2.

B. If a child is not in detention, fact-finding hearing must commence within sixty (60) days after petition is filed excluding Saturdays, Sundays, and legal holidays. I.C. 31-37-11-2. The Court may hold a fact finding hearing immediately after the initial hearing. I.C. 31-37-12-9(b).

Note: In-home incarceration is not considered being detained for purposes of timing of the fact-finding hearing. I.C. 31-37-11-2, I.C. 31-37-6-6.

C. The Court's failure to reschedule a fact-finding hearing to meet time limitations on motion of juvenile require the Court to release the child on his own recognizance or be released to the child's parents, guardians or custodians, subject to enforcement by writ of mandamus. See I.C. 31-37-11-7.

See **W.A. v. Marion County Superior Court**, 704 N.E. 2d 477 (Ind. 1998).
(Further, see Chapter D-6.01)

D. Delay caused by actions of the child or continuances granted to the child are excluded from time limitations. See I.C. 31-37-11-6(1)(2). Also, Prosecuting Attorney may move for continuance three (3) days before hearing on grounds of congestion of the Court's calendar. See I.C. 31-37-11-6(3). The Prosecuting Attorney may also seek continuance for up to ninety (90) days as a result of absence of a necessary witness. I.C. 31-37-11-8.

E. If the hearing is not commenced within the 90 day period, the Court shall discharge the child. I.C. 31-37-11-9(b).

III. Burden of Proof:

A. Finding that a child committed a delinquent act must be based upon proof beyond a reasonable doubt. I.C. 31-37-14-1. **Jonaitis v. State**, 437 N.E.2d 140 at 142, (Ind. Ct. App. 1982).

Findings and judgment of trial court will be affirmed on appeal if there is evidence of probative value from which a trier of fact may reasonably find existence of each element of the offense charged beyond a reasonable doubt. **Matter of Bridges**, 474 N.E.2d 529 (Ind. Ct. App. 1985).

IV. Written findings:

A. In all cases where finding of delinquency is based upon a delinquent act that would be a felony if committed by an adult, the juvenile court shall state in the findings the specific statute that was violated and the class of felony had it been committed by an adult. I.C. 31-37-13-5.

The failure to make adequate written record of findings and recommendations is error. **R.S. v. State**, 435 N.E.2d 1019 at 1020 (Ind. Ct. App., 1982).

V. Time for decision:

A. The Court may continue a case not more than twelve (12) months before judgment is entered. I.C. 31-37-13-4(a).

B. After the close of the evidence, if the child's parent, guardian or custodian requests judgment be entered, judgment shall be entered not later than thirty (30) days after request is made. I.C. 31-37-13-4(b).

C. If the child is in a juvenile detention facility and the case is continued without entry of judgment after the close of all the evidence, the child shall be released not later than forty-eight (48) hours, excluding Saturdays, Sundays, holidays, but may be detained in a shelter care facility. I.C. 31-37-13-4(c).

VI. Finding of Delinquency:

A. Upon finding of delinquency, the Court shall:

1. Enter judgment of delinquency
2. Order a predisposition report
3. Schedule a dispositional hearing

IC. 31-37-13-2

See Chapter 10

STATE OF INDIANA

____ COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER OF FACT-FINDING HEARING ON DELINQUENCY PETITION

(Order Finding Child is a Delinquent Child)

The State of Indiana appears by _____, (Deputy/Prosecuting Attorney)
 (Attorney for County Office of Family and Children). The child, _____,
 and his parent(s), _____ appear in person and by
 _____, attorney, representing the child (and child's parent[s]). The (Intake
 Officer), _____, appears.

The delinquency petition comes on for Fact-finding Hearings.
 (Select appropriate paragraph)

The Court being duly advised now finds that said child did commit the following acts of
 delinquency, to-wit:

and that the child is a delinquent child.

or

The Court finds that the act(s) would constitute a felony if committed by and adult. The
 finds that the statute(s) violated by the child, and the class of felony, if committed by an adult,
 (is) (are):

Statutory Citation and Offense:

Class of Felony:

(Select appropriate paragraph)

Upon such finding, the Court now enters judgment that said child is a delinquent child as defined
 by IC 31-37-1-2.

- (A) The Court orders _____ to prepare and file a Predispositional Report and the Court schedules a Dispositional Hearing in this case for the _____ day of _____, 20____, at _____ o'clock ____M. and further orders: _____.
- (B) Court refers possibility of restrictive placement to local coordinating committee for review.
- (C) By agreement of the parties, an immediate Dispositional Hearing is requested and held.

So ordered this _____ day of _____, 20____.

Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER ON FACT-FINDING HEARING ON DELINQUENCY PETITION

(Order Finding Child is not a Delinquent Child)

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney) (Attorney for County Office of Family and Children). The child,
_____, and his parents, _____,
attorney, _____ representing the child (and his
parent[s]). The (Intake Officer), _____, appears.

The delinquency petition comes on for Fact-finding Hearing.

The Court being duly advised now finds that said child is not a delinquent child and the
child is discharged from the jurisdiction of this Court in this case.

So ordered this ____ day of _____, 20 ____.

Judge

PRE-DISPOSITIONAL REPORTS

- I. Preparation, contents, and distribution of reports
 - A. The Court shall order the report if the Court enters a finding that the child is a delinquent child. IC 31-37-13-2. IC 31-37-17-1(a).
 1. Parties may waive filing of the predispositional report and the Court may proceed using the preliminary inquiry, prior predispositional report(s), or other relevant information if the Court is satisfied that it has the necessary information to proceed. IC 31-37-12-9(a).
 2. The report should include such matters as the child's legal history, home and environmental situation, school background and evaluation, personal history, community attitudes, social condition, health and emotional stability and any other relevant matters.
 3. The probation officer or caseworker may, or upon order of the Court, shall, consult with individuals who have expertise in the areas pertinent to the child's plan of care, rehabilitation, and treatment. A conference may be held that includes representatives from the child's school, the probation department, the county office of family and children, mental health centers located in the child's county of residence, mental or developmental disability centers located in the child's county of residence, or any other persons directed by the Court or deemed necessary by the person preparing the report.
 - a. If a child is known to be eligible for special education services or placement under IC 20-1-6, the conference, if convened, must include a representative from the child's school. IC 31-37-17-1.2.
 4. Predispositional reports are made available within a reasonable period of time prior to the dispositional hearing unless the Court determines on the record that the report contains information which should not be released to the child or the child's parent, guardian, or custodian. A copy of the report must be provided to the child's attorney, guardian ad litem, court appointed special advocate or any attorney representing the parent, guardian or custodian.

- B. Diagnostic evaluations can be ordered to supplement the dispositional reports. The Court may authorize mental and physical examinations on both an emergency and non-emergency basis. The Court may also make similar examinations of the parent, guardian or custodian with their consent.
IC 31-37-17-5, IC 31-37-12 et. seq.
- C. Financial reports of the parents or estate of the child must be provided with the predispositional report. The financial analysis should be sufficiently comprehensive to enable the court to determine the financial responsibility of the parent of the guardian of the estate at the dispositional hearing or at any hearing conducted for that purpose and issue an order for reimbursement for costs or portions for services ordered by the Court for the child or the child's parent, guardian or custodian and paid for by the county.
IC 31-37-17-3
IC 31-40-1-1 et. seq.
[Use Standard P.I./P.D.R. from the Indiana Judicial Center]
- D. A recommendation must be made concerning the care, treatment or rehabilitation, or placement of the child. In doing so, the person preparing the report must also take into consideration the necessity, nature and extent of the participation by the parent, guardian, or custodian the recommended treatment program.
IC 31-37-17-1(a)(2), IC 31-37-17-2(a).
See also IC 31-37-15-1 to 4 for parental participation petition.
[Use Standard P.I./P.D.R. from the Indiana Judicial Center]
- E. If consistent with the safety and best interest of the child and the community, the person preparing the report shall recommend a program of care, treatment or rehabilitation that:
1. is the least restrictive and most appropriate setting available, and
 2. is in close in proximity to the parents' home, consistent with the best interest and special needs of the child;
 3. least interferes with family autonomy;
 4. is least disruptive of family life;
 5. imposes the least restraint on the freedom of the child, his parents, guardian or custodian; and
 6. provides reasonable opportunity for participation by the child's parents, guardian, or custodian.
- IC 31-37-17-4
- F. The child, the child's parents, guardian, custodian, guardian ad litem or court appointed special advocate may submit written alternatives to the

predispositional report or present facts that support a less severe disposition or alternative dispositions. IC 31-37-17-1(b).

- G. The predispositional report may be comprised of the preliminary inquiry report supplemented with the remaining and/or additional information in addendum form (USE FORM D-3.06)
See **Howard V. State**, 372 N.E.2d 1237 (Ind. App. 1978)

You may insert a copy of the Standard Preliminary Inquiry/Predisposition Report promulgated by the Indiana Judicial Center

DISPOSITIONAL HEARINGS

I. Time of Dispositional Hearing

- A. Dispositional hearing shall be scheduled after fact finding hearing or admission.

I.C. 31-37-13-2

- B. Predisposition Report shall be ordered at time of scheduling dispositional hearing. (Unless waived: See Chapter 10)

I.C. 31-37-13-2

- C. Dispositional hearing may be scheduled not more than twelve (12) months from close of evidence in fact finding hearing. Dispositional hearing shall be scheduled not later than thirty (30) days after request is made for same by child or child's parents. (If child is in a detention facility, the child must be released within forty-eight (48) hours, excluding weekends and holidays, but may be detained in a shelter care facility.)

I.C. 31-37-13-4

- D. Dispositional hearing may occur immediately following initial hearing if child admits and all parties consent.

I.C. 31-37-12-9

II. Matters to be Considered at Hearing

- A. Alternatives for the care, treatment, rehabilitation, or placement of the child.

I.C. 31-37-18-1(1)

- B. The need, nature and extent of participation, including financial responsibility, by the parent or guardian in the program of care, treatment, or rehabilitation of the child.

I.C. 31-37-18-1(2)(3)

I.C. 31-37-15-4 and

I.C. 31-37-19-24

- C. No Contact Order: IC 31-37-25

1. Any of the following may sign and file a petition for the juvenile court to require a person to refrain from direct or indirect contact with a child:

1) The prosecuting attorney.

2) The attorney for the county office of family and children.

- 3) A probation officer.
- 4) A caseworker.
- 5) The department of correction.
- 6) The guardian ad litem or court appointed special advocate.
2. A petition filed under this section must be verified.
3. A petition seeking to restrain a person from contact must be entitled "In the Matter of a No Contact Order for _____". The petition must allege the following:
 - 1) That the respondent is likely to have direct or indirect contact with the child in the absence of an order under this chapter.
 - 2) That the child has been adjudicated a delinquent child.
 - 3) That the best interests of the child will be served if the person refrains from direct or indirect contact with the child.
4. The court may hold a hearing on a petition concurrently with a dispositional hearing or with a hearing to modify a dispositional order. If the court finds that the allegations under 3 (above) are true, the court shall enter a decree.
5. If a court enters a decree that requires a person to refrain from direct or indirect contact with a child, the clerk of the court shall comply with IC 5-2-9.

See Forms: "*Cover Sheet for Protection Order, No Contact Order, or Workplace Violence Restraining Order*" and "*No Contact Order-Delinquency*" located at the end of Chapter 11. See also 31-37-19-2.

See also: www.ingov/judiciary/forms/po.html

- D. Sex and Violent Offender Registration.
If child is at least fourteen (14) years of age and adjudicated a delinquent child for sex and violent offenses, the Court must determine by clear and convincing evidence whether the child is likely to re-offend. I.C. 5-2-12-4.

III. Hearing

1. Pre-dispositional report shall be prepared and provided to child and all parties, unless waived. See Chapter 10.
- B. Preparer of predispositional report must be present and give testimony if requested to explain preparer's examination of options and manner by which recommended options coincide with the guidelines of I.C. 31-37-17-4.
I.C. 31-37-18-1.1
- C. Predispositional report may be admitted into evidence.
I.C. 31-37-18-2
- D. Child and child's parent or guardian shall be informed at hearing of procedures for modification of dispositional decrees pursuant to I.C. 31-37-22.

I.C. 31-37-18-8

- E. Dispositional decree accompanied by findings and conclusions shall be entered by the Juvenile Court.

I.C. 31-37-18-6 and

I.C. 31-37-18-9

1. Findings need include child's legal settlement for purposes of school tuition.

I.C. 31-37-19-26 and

I.C. 20-8.1-6.1(a)(1)-(7)

2. Hearsay evidence is admissible at a dispositional hearing.

Matter of L.J.M, 473 N.E. 2d 637 (Ind. Ct. App.,1985)

IV. Dispositional Alternatives for Status Delinquent

- A. If a child is adjudicated a status delinquent, the court may enter one or more of the following dispositional decrees:

1. Supervision.

I.C. 31-37-19-1(1)

2. Outpatient treatment.

Authority to order psychiatric, psychological, social services, medical or educational treatment

I.C. 31-37-19-1-(2)

3. Placement of child in another home or shelter care facility.

I.C. 31-37-19-1(3)

4. Award wardship to a person or a shelter care facility without the right to consent to the child's adoption.

I.C. 31-37-19-1(4).

5. Emancipation.

I.C. 31-37-19-1(5)

I.C. 31-37-19-27

6. Family Services.

I.C. 31-37-19-1(6)

7. No Contact Order: IC 31-37-25

I.C. 31-37-19-1(7)

I.C. 31-37-19-22

I.C. 31-37-19-25

8. Invalidation of Child's Driver's License.
Court shall order BMV to invalidate driver's license or permit for 90-365 days if:

- a. offense is failure to attend school and
- b. child was previously a status delinquent.

I.C. 31-37-19-4

9. Status delinquent may not be placed in shelter care facility outside of county of residence unless:

- a. county does not have a shelter care facility or
- b. county shelter care facility does not have adequate services.

I.C. 31-17-19-3

10. Status delinquent for leaving home or failure to attend school must receive written warning of consequences of violation of placement at a dispositional hearing, or juvenile court may not modify dispositional order and place child in a public or private facility for children.

V. Dispositional Alternatives for Crime Delinquents

A. If a child is adjudicated a crime delinquent, the court may enter one or more of the following dispositional decrees:

1. Supervision.

I.C. 31-37-19-5(1)

2. Outpatient treatment at a social service agency, psychological, psychiatric, medical or educational facility.

I.C. 31-37-19-5(2)

3. Surrender of child's driver's license to the Court/suspension of driving privileges for a specific period.

I.C. 31-37-19-5(3)

I.C. 31-37-19-13

I.C. 31-37-19-14

I.C. 31-37-19-15

I.C. 31-37-19-16

I.C. 31-37-19-17

I.C. 31-37-19-17.3

See also Chapter 16, **Order of Pre-Adjudicated Suspension of License, Order of Reinstatement of Driving Privileges.**

4. Order restitution to victim.

I.C. 31-37-19-5(4)

5. Complete or partial emancipation.
I.C. 31-37-19-27

6. Attendance at an alcohol and drug service program established
under I.C. 12-23-14 (court established programs).
I.C. 31-37-19-5(6)

7. Performance of community restitution or service for a specified
time.
I.C. 31-37-19-5(7)

8. No Contact Order: IC 31-37-25
I.C. 31-37-19-1(7)
I.C. 31-37-19-22
I.C. 31-37-19-25

9. Award wardship or confinement.
a. Award wardship to:
1) the Indiana Department of Correction for housing in any
correctional facility for children or
2) to any community-based correctional facility for children.
[Wardship does not include right to consent to adoption: I.C. 31-37-19-6]
3) Juvenile must be at least twelve (12) and not over
eighteen (18) years of age, or
4) act must be a violation of I.C. 7.1-5-7 (Alcoholic Beverages -
Minors).
5) If murder, child must be at least thirteen (13) years of age.
I.C. 31-37-19-7, I.C. 31-37-19-9

b. Award wardship to a person or shelter care facility.
IC 31-37-19-6(b)(1)(E)

Award of wardship of a child to a person does not mean Division of Mental Health or
Office of Family and Children. **In re Garrett**, 631 N.E. 2d 11, (Ind.Ct.App., 1994);
Lake County Office of Family and Children v. Odisho, 656 N.E. 2d 526 (Ind.Ct.App.,
1995)

**NOTE: If a delinquent child is committed to the Department of Correction as
a dispositional alternative, then the committed child must be accompanied by
commitment papers prescribed by the department of correction. The court
should also send education information on the juvenile. Although not required
by statute, the DOC would like this information to insure proper placement of
the juvenile in their education programs as quickly as possible.**

NOTE: IC 31-30-2-2 provides that jurisdictional over a delinquent child closes upon

guardianship to the Department of Correction. See Chapter 14 regarding reasserting jurisdiction.

c. Determinate Sentencing.

1) If the child is at least thirteen (13) years of age and less than sixteen (16) years of age; and committed an act that, if committed by an adult, would be:

- i. murder (I.C. 35-42-1-1);
- ii. kidnaping (I.C. 35-42-3-2);
- iii. rape (I.C. 35-42-4-1);
- iv. criminal deviate conduct (I.C. 35-42-4-2); or
- v. robbery (I.C. 35-42-5-1), if committed while armed with a deadly weapon, or if it results in bodily injury or serious bodily injury;

the Court may order wardship of the child to the department of correction for a fixed period that is not longer than the date the child becomes eighteen (18) years of age, subject to the provisions of I.C. 11-10-2-3. Notwithstanding I.C. 11-10-2-5, the department of correction may not reduce the period ordered under this subdivision.

I.C. 31-37-19-9

2) If the child is at least 14 years of age, and has two prior unrelated adjudications of delinquencies for acts that would be felonies if committed by an adult, and is then adjudicated a delinquent child for an act that would be:

- a. a felony against a person;
- b. a Class A or Class B felony that is a controlled substances offense under I.C. 35-48-4-1 through I.C. 35-48-4-5; or
- c. burglary as a Class A or Class B felony under I.C. 35-43-2-1;

the Court may place the child in a facility authorized under this section for not more than two (2) years.

I.C. 31-37-19-10

d. Confinement of the Child in a Juvenile Detention Facility.

1) If the child is less than seventeen (17) years of age, for the lesser of ninety (90) days or the maximum term of imprisonment for the crime had the child been an adult.

I.C. 31-37-19-6(b)(2)(B)

2) If the child is at least seventeen (17) years of age for the lesser of one hundred twenty (120) days, or

the maximum term of imprisonment for the crime had the child been an adult.

I.C. 31-37-19-6(b)(2)(C)

3) Confinement may be continuous or intermittent. IC 31-37-19-8

e. Placement of the child in another home or state licensed juvenile facility which includes authorization to control and discipline the child.

I.C. 31-37-19-6(b)(2)(D)(E) and (F).

f. Crime delinquent may not be placed in a juvenile facility outside county of residence unless county does not have comparable facility or county facility does not have adequate services.

I.C. 31-37-19-23

10. Risk of Transmission of HIV.

The Court shall order the child to undergo a screening test for HIV; a confirmatory test for HIV if the screening is positive; and report positive results of confirmatory test to State Department of Health if delinquent act is a sex crime listed in I.C. 35-38-1-7.1. (rape; criminal deviate conduct; child molesting; child seduction; prostitution; patronizing a prostitute; incest) or possession or dealing of a controlled substance listed in I.C. 35-38-1-7.1 which includes the use of paraphernalia that creates and epidemiologically demonstrated risk of transmission of HIV by percutaneous contact. IC 31-37-19-12

VI. Dispositional Decree

A. Dispositional decree must contain written findings and conclusions as to:

1. The needs of the child for care, treatment, rehabilitation, or placement.
2. The need for participation by the child's parents in the plan of care for the child.

3. The Court's reasons for the disposition

I.C. 31-37-18-9

4. Legal settlement of child for purposes of school tuition.

I.C. 31-37-19-26

5. The reasonable efforts made to prevent removal or the issues of safety that precluded the immediate use of services to prevent removal were:

6. Continuation of residence in the home would be contrary to the welfare of the child because: _____

B. Dispositional decree need consider :

1. safety of community;
2. best interest of child;
3. least restrictive;
4. close to child's home;
5. least interference with family autonomy;
6. least disruptive to family life;
7. least restraint on child and parents; and
8. provide opportunity to parents for participation [in child's rehabilitation].
9. The reasonable efforts made to prevent removal and the determination that continuation of residence in the home would be contrary to the welfare of the child

I.C. 31-37-18-6

VII. Mentally Ill Child

A. Refer to Court with probate jurisdiction or initiate a civil commitment under I.C. 12-26.

I.C. 31-37-18-3

B. If child is referred to Court with probate jurisdiction, juvenile court may continue or discontinue proceedings under the juvenile law.

I.C. 31-37-18-4

SAMPLE DIALOGUE: DISPOSITIONAL HEARING

COURT: The State of Indiana appears by _____, Deputy/Prosecuting Attorney)(Attorney for _____ County Office of Family and Children). The juvenile, _____, appears in person. The parent(s) (guardian) (custodian) appears in person. Also, (Intake Officer) _____, appears.

COURT: The delinquency petition comes on for a Dispositional Hearing.

COURT: This is Juvenile Case No. _____ entitled "In The Matter Of _____, a juvenile alleged to be a delinquent child."

COURT: We are here today pursuant to a finding of delinquency by this court on the _____ day of _____, 20____.

COURT: The purpose of a dispositional hearing is to consider: 1) alternatives of the care, treatment or rehabilitation for the juvenile; 2) the necessity, nature and extent of the participation by a parent, guardian or custodian in a program of care, treatment or rehabilitation for the juvenile; 3) the financial responsibility of the parent or guardian or the estate for any services provided for himself or the juvenile, and 4) services ordered for the parents pursuant to the Petition for Parental Participation.

COURT: The Juvenile Probation Department having filed with the court its predispositional report, and the court having considered said report, the same is now admitted into evidence.

COURT: Have you and your parents had an opportunity to read and examine the predispositional report and to go over the report with your attorney?

A:

COURT: Do any of the parties have any statements to make concerning this report or any additions or corrections to be made to the report?

A:

COURT: Does the prosecuting attorney or attorney for the county office of family and children have any recommendation or any information which he would like to offer prior to disposition?

A:

COURT: Do you have any evidence you wish to present that is relevant to your disposition?

A:

COURT: Does the attorney for the juvenile, the juvenile, or parents have anything to say prior

to disposition?

A:

COURT: (If applicable) A petition for parental participation has been filed. Parents, have you received a copy? Do you wish to dispute any portion of the plan?

COURT: (If appropriate) The local coordinating committee having filed its recommendation with the court, and the court having considered such recommendation, it is now admitted into evidence.

(If applicable, give Written Warning of Consequences For Violation Of Placement Order By Runaway or Truant at this time.) USE FORM D-11.08 or D-11.09.

NOTE: From this point on, several alternatives are available and the dispositional hearing procedure will vary accordingly. The following forms should be modified to reflect the appropriate dispositional alternative.

COURT: Now that disposition has been pronounced, there are several other matters which you should be aware of.

First, the terms of the disposition may be modified at any time on the court's own motion, motion of the prosecuting attorney/attorney for the office of family and children, probation officer/caseworker, you or your parent, guardian or custodian.

Second, your case must be reviewed, at a full hearing, no later than eighteen (18) months from now. The State will then have the burden of proving that your supervision should continue. (If you are in placement, there must also be a review hearing no later than twelve (12) months from now [except for placement at the department of correction] [except for a placement for a repeat runaway or truant which is reviewed in three (3) months] [except for a placement for a repeat runaway or truant in a local secure public facility or in a local alternative facility approved by the juvenile court which placement may not exceed thirty (30) days], and the burden will be upon the state to show that you should not be returned home.)

Note: IVE eligibility requires more frequent reviews. See Chapter 14.

Third, you have a right to appeal your disposition and adjudication as provided by law. See D-13.01.

Do you understand all of these matters?

A:

STATE OF INDIANA

____ COURT

In The Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

DISPOSITIONAL ORDER

Suspended Commitment/Supervision

The State of Indiana appears by _____,
 (Deputy/Prosecuting Attorney). Probation officer, _____, appears. The child,
 _____, appears in person and with/without counsel,
 _____, and the parent(s) (guardian) (custodian)
 _____ appear in person.

The child having entered an admission of the delinquent act (having been found to have committed the delinquent act) alleged in the Petition filed herein, is now (or has heretofore been) adjudicated a delinquent. The Court, after reviewing the predispositional report (and recommendation of the local coordinating committee)(and hearing statements and evidence presented to the Court regarding the disposition of this case), and the Court having considered:

1. The interests of the child and the public;
2. The child's independently held assets and assets available to the child's parent(s);
3. The child's income;
4. The child's liabilities; and
5. The extent of the burden that payment of costs assessed under IC 33-9-11.5-6 would impose on said child, the child's parent(s) and their dependents;

The Court now awards wardship of _____, a juvenile, to the Indiana Department of Correction for housing in any correctional facility for children or any community-based correctional facility for children. Said commitment is suspended on the condition that _____, comply with the rules of supervision

(name of juvenile)

as attached hereto, said commitment and suspension being made for the following reasons (*Here include reasons for the disposition*):

(OPTIONAL)

[The Court now sets the ____ day of _____, 20 ____, at ____ M. as the date and time for hearing to determine whether the dispositional decree should be modified or at an earlier date if ordered by the Court.]

NOTE: **The date for review of the disposition must be within twelve (12) months if a child has been removed from his parent, guardian or**

custodian. Whether the child was so removed or not, the Court must review the disposition for the purpose of determining whether its jurisdiction should continue within eighteen (18) months from the disposition decree. The secure detention of a repeat runaway or repeat truant must be reviewed every three (3) months.

(OPTIONAL)

The legal settlement of the child is _____. The _____ County Office of Family and Children shall provide the notice required under IC 20-8.1-6.1-5.5.

(OPTIONAL)

A Parental Participation Petition having been filed with this Court and jurisdiction obtained upon _____ parents (Custodian or guardian) of _____, the Court after hearing evidence and being (name of juvenile) duly advised, now finds that the allegations contained in the Petition for Parental Participation are true and the parents (guardian or custodian) shall participate in a treatment program or pay for services as follows:

[Set forth specifically what the parents are to do and for what they are to be financially responsible.]

IT IS FURTHER ORDERED that:

☐ The Child;

☐ The Child's Parent(s), Guardian, Custodian: _____

☐ shall pay Court costs of \$ _____;

☐ shall pay an Initial probation user's fee of \$ _____; (not less than \$25.00 nor more than \$100.00);

☐ shall pay a Monthly supervision fee of \$ _____; (not less than \$5.00 nor more than \$15.00);

THE COURT FURTHER FINDS AND ORDERS that:

☐ The reasonable value of the legal services provided to the child in this case is: \$ _____.

☐ _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$ _____, in payments of not less than \$ _____, per (week) (month).

☐ _____
(Name of Parent(s), Guardian or Custodian) (Address)

is reasonably able to pay for said services and shall pay the sum of \$_____, in payments of not less than \$_____, per (week) (month).
to the Clerk of Court, to be deposited by the Clerk in the {Name of Agency/Fund Account}:_____.

[] The reasonable value of the _____ services provided for or on behalf of the child in this case is \$_____.

[] _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$_____, in payments of not less than \$_____, per (week) (month).

[] _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$_____, in payments of not less than \$_____, per (week) (month).

to the Clerk of Court, to be deposited by the Clerk in the {Name of Agency/Fund Account}:_____.

So ORDERED this ____ day of _____, 20____.

Judge

NOTE: If the Court believes the dispositional alternative of restitution should be applied, the findings of fact in the dispositional decree should reflect such and a sentence added to the dispositional decree ordering the restitution and the amount.

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

DISPOSITIONAL ORDER

Supervision

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney). Probation officer, _____, appears. The child,
_____, appears in person and with/without counsel,
_____, and the parent(s) (guardian) (custodian)
_____ appear in person.

The child, having entered an admission of the delinquent act (having been found to have committed the delinquent act), alleged in the Petition filed herein, is now (or has heretofore been) adjudicated a delinquent. The Court, after reviewing the predispositional report (and hearing statements and evidence presented to the Court regarding the disposition of this case), and the Court having considered:

1. The interests of the child and the public;
2. The child's independently held assets and assets available to the child's parent(s);
3. The child's income;
4. The child's liabilities; and
5. The extent of the burden that payment of costs assessed under IC 33-9-11.5-6 would impose on said child, the child's parent(s) and their dependents;

the Court now finds as follows [*Here include findings of fact pursuant to IC 31-37-18-6, 31-37-18-9, which includes the needs of the child and need for participation by the parents.*]:

(OPTIONAL)

The Court now orders that _____ be confined to the
_____ for _____ days.
(juvenile detention facility)

(OPTIONAL)

The Court now places _____ under the
(name of juvenile)
supervision of the _____ County Probation Department, and order said child to
comply with the rules of probation as attached hereto, for the following reasons (*Here include
the reasons for the disposition*):

(OPTIONAL)

The Court now sets the ____ day of _____, 20____, at ____M. as the date and time for hearing to determine whether or not the dispositional decree should be modified or at an earlier date if ordered by the Court.

(OPTIONAL)

A Parental Participation Petition having been filed with this Court and jurisdiction obtained upon _____ parents (custodian or guardian) of _____, the Court after hearing evidence and being _____
(name of juvenile)

duly advised, now finds that the allegations contained in the Petition for Parental Participation are true and that the parents (guardian or custodian) shall participate in a treatment program or pay for services as follows (*Set forth specifically what the parents are to do and for what they are to be financially responsible*):

IT IS FURTHER ORDERED that:

☐ The Child;

☐ The Child's Parent(s), Guardian, Custodian: _____

☐ shall pay Court costs of \$_____;

☐ shall pay an Initial probation user's fee of \$ _____; (not less than \$25.00 nor more than \$100.00);

☐ shall pay a Monthly supervision fee of \$ _____; (not less than \$5.00 nor more than \$15.00);

THE COURT FURTHER FINDS AND ORDERS that:

☐ The reasonable value of the legal services provided to the child in this case is: \$_____.

☐ _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$_____, in payments of not less than \$ _____, per (week) (month).

☐ _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$_____, in payments of not less than \$ _____, per (week) (month).

to the Clerk of Court, to be deposited by the Clerk in the {Name of Agency/Fund Account}: _____.

[] The reasonable value of the _____ services provided for or on behalf of the child in this case is \$_____.

[] _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of
\$_____, in payments of not less than \$_____,
per (week) (month).

[] _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of
\$_____, in payments of
not less than \$_____, per (week)
(month).

to the Clerk of Court, to be deposited by the Clerk in the {Name of Agency/Fund Account}:_____.

So ORDERED this ____ day of _____, 20__.

Judge

NOTE: If the Court believes the dispositional alternative of restitution should be applied, the findings of fact in the dispositional decree should reflect such and a sentence added to the dispositional decree ordering the restitution and the amount.

STATE OF INDIANA

____ COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

DISPOSITIONAL ORDER
Wardship for Purposes of Placement

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney). Probation officer, _____, appears. The child,
_____, appears in person and with/without counsel,
_____, and the parent(s) (guardian) (custodian)
_____ appear in person.

The juvenile having entered an admission of the delinquent act (having been found to have committed the delinquent act) alleged in the Petition filed herein, is now (or has heretofore been) adjudicated a delinquent. The Court, after reviewing the predispositional report (and recommendation of the local coordinating committee)(and hearing statements and evidence presented to the Court regarding the disposition of the case), and the Court having considered:

1. The interests of the child and the public;
2. The child's independently held assets and assets available to the child's parent(s);
3. The child's income;
4. The child's liabilities; and
5. The extent of the burden that payment of costs assessed under IC 33-9-11.5-6 would impose on said child, the child's parent's and their dependents;

the Court now finds as follows *[Here include findings of fact and reasons pursuant to IC 31-37-18-6, 31-37-18-9 including findings as to the home or place where the child should be placed or granted wardship and including the reason for the disposition.]*:

The legal settlement of the child is _____. The _____ County Office of Family and Children shall provide the notice required under IC 20-8.1-6.1-5.5.

IT IS ORDERED, ADJUDGED AND DECREED that:

[] The Child, _____ is now placed in: _____ facility for the following reasons:

- a. Continuation in the home is contrary to the welfare of the child and placement is in the best interest of the child because: [insert specific findings].

b. Reasonable efforts were made to prevent removal as follows: [insert specific findings:]

The _____ County Office of Family and Children is authorized to expend necessary funds for the care of said juvenile.

☐ The Court now gives said child a written warning of the consequences of a violation of the placement made in this order which written warning as given by the court to said child is now filed and made a part of the record herein.

☐ A Parental Participation Petition having been filed with this Court and jurisdiction obtained upon _____ parents (custodian or guardian) of the Child, the Court after hearing evidence and being duly advised now finds that the allegations contained in the Petition for Parental Participation are true and that the parents (guardian or custodian) shall participate in a treatment program or pay for services as follows (*Set forth specifically what the parents are to do and for what they are to be financially responsible*):

IT IS FURTHER ORDERED that:

☐ The Child;

☐ The Child's Parent(s), Guardian, Custodian: _____

☐ shall pay Court costs of \$ _____;

☐ shall pay an Initial probation user's fee of \$ _____; (not less than \$25.00 nor more than \$100.00);

☐ shall pay a Monthly supervision fee of \$ _____; (not less than \$5.00 nor more than \$15.00);

THE COURT FURTHER FINDS AND ORDERS that:

☐ The reasonable value of the legal services provided to the child in this case is: \$ _____.

☐ _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$ _____, in payments of not less than \$ _____, per (week) (month).

☐ _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$ _____, in payments of not less than \$ _____, per (week) (month).

to the Clerk of Court, to be deposited by the Clerk in the {Name of Agency/Fund Account}: _____.

[] The reasonable value of the _____ services provided for or on behalf of the child in this case is \$_____.

[] _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of
\$_____, in payments of not less than \$_____,
per (week) (month).

[] _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of
\$_____, in payments of
not less than \$_____, per (week)
(month).

to the Clerk of Court, to be deposited by the Clerk in the {*Name of Agency/Fund Account*}:_____.

So ORDERED this ____ day of _____, 20__.

Judge

NOTE: The Benchbook Committee recommends that a review date be set at this time.

STATE OF INDIANA

____ COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child.

Date of Birth: _____.

DISPOSITIONAL ORDER

Wardship Awarded to Department of Correction

The State of Indiana appears by _____,
 (Deputy/Prosecuting Attorney). Probation officer, _____, appears. The child,
 _____, appears in person and with/without counsel,
 _____, and the parent(s) (guardian) (custodian)
 _____ appear in person.

The delinquency petition comes on for a dispositional hearing.

The juvenile [having admitted the delinquent act(s)] [having been found to have
 committed the delinquent act(s)] alleged in the petition filed herein, the Court now finds that the
 child did commit (a) (the) delinquent act(s), as follows (*State offenses and class of*
felony/misdemeanor): _____

[] The Court reviewed the recommendation of the local coordinating committee,

The Court reviewed the predispositional report and having heard evidence and statements
 presented to the Court concerning the disposition of this cause for action, the Court, pursuant to
 I.C. 31-37-18-6, 31-37-18-9, and the Court having considered the interests of the child and the
 public makes the following findings of fact:

The Child has a prior history of delinquent adjudications in the following case numbers:

The Court further finds that continuation in the home would be contrary to the welfare of the
 child because _____

Reasonable efforts have been made/or an emergency exists such that reasonable efforts could not
 be made to prevent placement _____

The Court hereby incorporates by reference all the reports and evidence received or admitted at
 this hearing.

The legal settlement of the child is _____. The _____ County Office of Family and Children shall provide the notice required under IC 20-8.1-6.1-5.5.

☐ Pursuant to (IC 31-37-19-6) (IC 31-37-19-9), the Court now awards wardship of the child to the Indiana Department of Correction for housing in any correctional facility for children.

☐ The child is a female and is not known to the Court to be pregnant.

The child (does) (does not) have any pending charges known to the Court at this time: _____.

The Court recommends that the Department of Correction [*add placement, treatment, length of stay recommendations*]:

☐ Pursuant to IC 5-2-12-4(2) [SEX OFFENDER REGISTRY (*If applicable under current case law*)], the child is at least fourteen (14) years of age who has committed a sex offense under IC 5-2-12-4(1), and the Court now finds by clear and convincing evidence that the child is likely to repeat an act that would be an offense under IC 5-2-12-4 if committed by an adult.

☐ The court orders the Department of Corrections to provide notice of said juvenile's release for the purpose of reinstating jurisdiction at least 10 days prior to release. The court will be setting a hearing as to the issue of the Sex Offender Registry, restitution, or supervision.

The Court's dispositional order is entered for the following reasons:

The [clerk] [sheriff] [probation officer] is hereby ordered to transmit this dispositional order, a copy of the delinquency petition, a copy of the predispositional report, and a summary of the Court's information concerning the child to the Indiana Department of Correction.

The Sheriff of _____ County shall execute this order by transporting the child to _____.

IT IS FURTHER ORDERED that:

☐ The Child;

☐ The Child's Parent(s), Guardian, Custodian: _____

☐ shall pay Court costs of \$_____;

THE COURT FURTHER FINDS AND ORDERS that:

[] The reasonable value of the legal services provided to the child in this case is:
\$_____.

[] _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of
\$_____, in payments of not less than \$ _____,
per (week) (month).

[] _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of
\$_____, in payments of not less than \$ _____,
per (week) (month).

to the Clerk of Court, to be deposited by the Clerk in the {Name of Agency/Fund
Account}:_____.

[] The reasonable value of the _____ services
provided for or on behalf of the child in this case is \$_____.

[] _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of
\$_____, in payments of not less than \$ _____,
per (week) (month).

[] _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of
\$_____, in payments of
not less than \$ _____, per (week)
(month).

to the Clerk of Court, to be deposited by the Clerk in the {Name of Agency/Fund
Account}:_____.

So ORDERED this _____ day of _____, 20____.

Judge

State of Indiana

County of _____

I, _____, Clerk of said County, do hereby certify that
_____, whose genuine signature is appended to the
foregoing Dispositional Order, was, at the date thereof, and is Judge of the Court having juvenile
jurisdiction in this county. IN WITNESS whereof, I have hereunto set my hand and affixed the
seal of said Court at _____, Indiana, this _____ day of

_____,20 ____.

Clerk _____

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____
A Child Alleged to be a Delinquent Child

ORDER TO REINSTATE JURISDICTION OVER CHILD

The court, upon being advised of the release of the juvenile from the Department of Corrections, on its own motion, now reinstates jurisdiction over the child named above in accordance with I.C. 31-30-2-1 et.seq.

Hearing hereby set for the _____ day of _____, 20____ at _____ m. to
determine _____.
(restitution, sex offender registry, supervision)

So ORDERED this _____ day of _____, 20____.

Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**WRITTEN WARNING OF CONSEQUENCES FOR VIOLATION
OF PLACEMENT ORDER BY RUNAWAY**

You are now advised that if you violate the Dispositional Order for this court placing you at _____, the juvenile court may modify its
(name of facility)
dispositional order if the following conditions are met:

- (1) You were placed in a shelter care facility or other place of residence as part of a court order with respect to a delinquent act under IC 31-37-2-2 [runaway];
- (2) You received a written warning of the consequences of a violation of the placement at the hearing during which the placement was ordered;
- (3) The issuance of the warning was reflected in the records of the hearing;
- (4) You have not been held in a juvenile detention facility for more than twenty-four (24) hours (excluding Saturdays, Sundays, and holidays) before the hearing at which it is determined that you violated the part of the order concerning your placement in a shelter care facility or other place of residence; and
- (5) The court determines your mental and physical condition may be endangered if you are not placed in a secure facility.

The court further advises you that the court may modify its dispositional order if the foregoing conditions are met and place you:

- (1) In a nonlocal secure private facility;
- (2) In a local secure private facility;
- (3) In a local secure public facility;
- (4) In a local alternative facility approved by the juvenile court; or
- (5) As a ward of the department of correction.

This written notice has been served upon _____
(name of juvenile)
on _____, 20____, in open court.

Judge**ACKNOWLEDGEMENT OF RECEIPT OF WARNING**

I, the undersigned, now acknowledge that I am the person designated in the warning as being ordered into placement, that I have read and fully understand the warning, that I have been given a copy of the warning, and that I have placed my signature below.

Witness:

Attorney

(Signature of juvenile)

Parent

Other

STATE OF INDIANA

COURT

In The Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**WRITTEN WARNING OF CONSEQUENCES FOR VIOLATION
OF COMPULSORY SCHOOL ATTENDANCE LAW**

TO: _____

You are now advised that if you violate the dispositional order of this Court which requires you to comply with the compulsory school attendance law (IC 20-8.1-3), the juvenile court may modify its dispositional order if the following conditions are met:

- (1) You fail to comply with the compulsory school attendance law (IC 20-8.1-3) as part of a court order with respect to a delinquent act under IC 31-37-2-3
- (2) You received a written warning of the consequences of a violation of the court order;
- (3) The issuance of a warning was reflected in the records of the hearing;
- (4) You have not been held in a juvenile detention facility for more than twenty-four (24) hours (excluding Saturdays, Sundays and holidays) before the hearing at which it is determined that you violated that part of the order concerning your school attendance; and
- (5) The court determines your mental and physical condition may be endangered if you are not placed in a secure facility.

The Court further advises you that the court may modify its dispositional order if the foregoing conditions are met and place you:

- (1) In a nonlocal secure private facility;
- (2) In a local secure private facility;
- (3) In a local secure public facility;
- (4) In a local alternative facility approved by the juvenile court; or
- (5) As a ward of the department of correction.

This written notice has been served upon _____ on
(name of juvenile)
_____, 20____, in open court.

Judge**ACKNOWLEDGEMENT OF RECEIPT OF WARNING**

I, the undersigned, now acknowledge that I am the person designated in the warning as being ordered into placement, that I have read and fully understand the warning, that I have been given a copy of the warning, and that I have placed my signature below.

Witness:

Attorney

(Signature of juvenile)

Parent

Other

COURT ORDERS TO PARENTS AND OTHERS

I. Parental participation in a program of care, treatment or rehabilitation.

Note: The Juvenile Benchbook Committee recommends that the Court consider using the Parental Participation Form more aggressively to promote holistic family services, with a goal of reducing further delinquency by the child and other siblings in the family unit. IV-E funds and IV-E Waiver funds may be a funding source.

- A. After adjudication, the intake officer shall consider the necessity, nature and extent of parental participation pursuant to IC 31-37-17-2.
- B. The prosecutor, attorney for the county office of family and children, probation officer, or caseworker may sign and file a petition for parental participation under IC 31-37-15-1.
- C. Notice of parental participation must have been given at the initial hearing pursuant to IC 31-37-12-6.
- D. The court's order must specify reasons for such parental participation in accordance with IC 31-37-19-24.
USE FORM D-12.02
USE FORM D-12.03
USE FORM D-12.04
USE FORM D-12.05

II. No Contact Order: IC 31-37-25, 31-37-19-2

See Forms in Chapter 11: *“Cover Sheet for Protection Order, No Contact Order, or Workplace Violence Restraining Order”* and *“No Contact Order, Delinquency”*

See also: www.ingov/judiciary/forms/po.html

III. Injunctions

- A. A temporary restraining order issued without notice is valid for up to seventy-two (72) hours in accordance with TR. 65 and IC 31-32-13-8.
- B. After notice, a hearing on a preliminary injunction must be held pursuant to TR. 65 and IC 31-32-13-3
- C. If an emergency exists, a juvenile court may issue an injunction. **Matter of Lemond**, 413 N.E.2d 228 (Ind. 1980).

IV. Reimbursement:

1. Expenses which a parent or guardian of the estate must pay.
 1. The parent or guardian of the estate of any child returned to Indiana under the interstate compact for juveniles (IC 31-40-1-4) shall reimburse the county for all costs involved in returning the child regardless of whether the child has been adjudicated delinquent.
 2. Court costs: IC 31-31-2-1; IC 33-19-5-3.
 3. Upon terminating parental rights, any support obligations that accrued before termination are not affected except that the support payments shall be made under the juvenile court's order.
 4. Each parent of a child shall be ordered to pay for services provided to the child with reference to the child support guidelines adopted by the Indiana Supreme Court. IC 31-40-1-5.

Exception: If the court finds that the parents/guardians are unable to pay, or justice would not be served by ordering payment, the order of reimbursement need not be issued.

- B. Expenses which a parent or guardian of the estate may be ordered to pay:
 1. Fees & Expenses:
 - a. Probation User's fee: IC 31-40-2
 - c. Guardian ad litem or court appointed special advocate fees: IC 31-40-3
 - d. Parental support for partially emancipated child: IC 31-37-19-27
 - e. Outpatient social, psychological, psychiatric, medical or educational care: IC 31-37-19-5; IC 31-40-1-3
 - g. Care, including support, provided in an institution or foster care: IC 31-37-19-6; IC 31-40-1-3
 2. A parent or guardian of the estate of a child adjudicated a delinquent child or a child in need of services is financially responsible as provided in this chapter (IC-31-40-1, or IC 31-6-4-18(e) before its repeal) for any services ordered by the court. IC 31-40-1-3(a)
 3. An intake officer shall prepare a financial report on the parent or the estate of the child to assist the court in determining financial responsibility. See IC 31-37-17-3
 4. Each parent of a child alleged to be a child in need of services or alleged to be a delinquent child shall, before a dispositional hearing, furnish the court with an accurately completed and current child support obligation worksheet on the same form that is prescribed by the Indiana Supreme Court for child support orders. IC 31-40-1-3(b).

C. Collection procedures under IC 31-40-1-5:

1. This section applies whenever the court orders or approves removal of a child from the home of a child's parent or guardian and placement of the child in a child caring institution (as defined in IC 12-7-2-29), a foster family home (as defined in IC 12-7-2-90), or the home of a relative of the child that is not a foster family home.

2. If an existing support order is in effect, the court shall order the support payments to be assigned to the county office for the duration of the placement out of the home of the child's parent or guardian. The court shall notify the court that:

(a) entered the existing support order; or

(b) had jurisdiction, immediately before the placement, to modify or enforce the existing support order;

of the assignment and assumption of jurisdiction by the juvenile court under this section.

3. If an existing support order is not in effect, the court shall do the following:

(a) Include in the order for removal or placement of the child an assignment to the county office, or confirmation of an assignment that occurs or is required under applicable federal law, of any rights to support, including support for the cost of any medical care payable by the state under IC 12-15, from any parent or guardian who has a legal obligation to support the child.

(b) Order support paid to the county office by each of the child's parents or the guardians of the child's estate to be based on child support guidelines adopted by the Indiana Supreme Court and for the duration of the placement of the child out of the home of the child's parent or guardian, unless:

(1) the court finds that entry of an order based on the child support guidelines would be unjust or inappropriate considering the best interests of the child and other necessary obligations of the child's family; or

(2) the county office does not make foster care maintenance payments to the custodian of the child. For purposes of this clause, "foster care maintenance payments" means any payments for the cost of (in whole or in part) and the cost of providing food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable amounts for travel to the child's home for visitation. In the case of a child caring institution, the term also includes the reasonable costs of administration and operation of the institution as are necessary to provide the items described in this clause.

(c) If the court:

(A) does not enter a support order; or

(B) enters an order that is not based on the child support guidelines; the court shall make findings as required by 45 CFR 302.56(g):

[(g) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.]

Court must hear evidence of ability to pay. **M.L.K. v. Wells County DFC**, 751 N.E.2d 293, (Ind. App. 2001).]

4. Payments in accordance with a support order assigned under subsection (b) or entered under subsection (c) (or IC 31-6-4-18(f) before its repeal) shall be paid through the clerk of the circuit court as trustee for remittance to the county office.

5. The Title IV-D agency shall establish, modify, or enforce a support order assigned or entered by a court under this section in accordance with IC 12-17-2 and 42 U.S.C. 654. The county office shall, if requested, assist the Title IV-D agency in performing its duties under this subsection.

6. If the juvenile court terminates placement of a child out of the home of the child's parent or guardian, the court shall:

(1) notify the court that:

(A) entered a support order assigned to the county office under subsection (b); or

(B) had jurisdiction, immediately before the placement, to modify or enforce the existing support order;

of the termination of jurisdiction of the juvenile court with respect to the support order;

(2) terminate a support order entered under subsection (c) that requires payment of support by a custodial parent or guardian of the child, with respect to support obligations that accrue after termination of the placement; or

(3) continue in effect, subject to modification or enforcement by a court having jurisdiction over the obligor, a support order entered under subsection (c) that requires payment of support by a noncustodial parent or guardian of the estate of the child.

7. The court may at or after a hearing described in section 3 of this chapter order the child's parent or the guardian of the child's estate to reimburse the county office for all or any portion of the expenses for services provided to or for the benefit of the child that are paid from the county family and children's fund during the placement of the child out of the home of the parent or guardian, in addition to amounts reimbursed through payments in accordance with a support order assigned or entered as provided in this section, subject to applicable federal law.

V. Termination of reimbursement jurisdiction

The Court's jurisdiction over the parents continues until the parents' financial obligation imposed under IC 31-40 has been satisfied. IC 31-30-2-1(c).

VI. Enforcement of reimbursement orders

- A. If the parent or guardian of the estate defaults in reimbursing county, or fails to pay any fee authorized by this article, the juvenile court may find the parent in contempt and may enter judgment for the amount due. IC 31-40-1-5. See discussion in D-11.01. Judgment may be enforced by Proceedings Supplemental.
- B. Proceeding Supplemental are a nullity absent a valid judgment. TR 58 requires that a judgment contain a statement in imperative form which clearly and concisely sets forth the relief granted, etc. Where it was unclear whether full or partial reimbursement was contemplated and what would end the payments, there was no enforceable judgment. **Washburn v. OFC**, 726 N.E. 2d 361 (Ind. Ct. App. 2000)
- C. Judgment against parents to reimburse OFC for costs incurred in providing care for juvenile was not in nature of support and was dischargeable in bankruptcy. **M.L.K. vs. Wells County DFC**, 751 N.E.2d 293 (Ind. Ct. App. 2001)

VII. Parental Liability for Intentional Torts of Child:

A parent is liable for up to \$5,000.00 in actual damages arising from harm to a person or damage to property knowingly, intentionally, or recklessly caused by the parent's child if: (1) the parent has custody of the child; and (2) the child is living with the parent. IC 34-31-4-1.

STATE OF INDIANA

COURT

In The Matter of the Participation of:

the Parent, Guardian or Custodian of:

Case No. _____

PETITION FOR PARENTAL PARTICIPATION

_____, (Deputy/Prosecuting Attorney, Attorney for County Office of Family and Children, Probation Officer, Department of Correction or Caseworker), being duly sworn upon his oath, states that:

1. the respondent is the child's parent, guardian or custodian;
2. the child has been adjudicated a delinquent;
3. the parent, guardian or custodian should:
 - (a) obtain assistance in fulfilling his obligation as a parent, guardian or
custodian;
 - (b) provide specified care, treatment or supervision for the child; or
 - (c) work with any person providing care, treatment or rehabilitation for the
child.
 - (d) *{Other specific requests}*:

_____.

WHEREFORE, it is respectfully requested that the Court set a hearing to require parental participation pursuant to this petition and for all other just relief, right and proper in the premises.

I affirm, under the penalties for perjury, that the foregoing representations are true to the best of my knowledge and belief.

Date: _____

Petitioner

STATE OF INDIANA

COURT

In The Matter of the Participation of:

the Parent, Guardian or Custodian of:

Case No. _____

ORDER OF PARTICIPATION

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney)(Attorney for County Office of Family and Children). The
parent(s) (guardian) (custodian), _____, appear in person.
Also, (Intake Officer) _____, appears.

The Petition for Parental Participation comes on for hearing. The juvenile having been
adjudicated a delinquent child, the parents/guardian/custodian having been notified of this
hearing, and evidence having been heard, the Court now finds *[Here include findings of fact for
parental participation]*:

The Court now orders _____, the
parents/guardian/custodian of the juvenile, to _____

So ORDERED this ____ day of _____, 20____.

Judge

STATE OF INDIANA

____ COURT

IN THE MATTER OF:

Case No. _____

A Child Alleged to be a Delinquent Child.

VERIFIED INFORMATION FOR RULE TO SHOW CAUSE

The undersigned _____, a _____
(name)

_____ affirms under the pains and penalties of
(official capacity)
perjury that the following is true and correct to the best of the Petitioner=s knowledge,
information and belief, to-wit:

(1) That on the ____ day of _____, 20 ____, this cause, ordered that
_____ do the following:
(name)

(2) That _____ has failed to comply with said order
(name)
in that: _____

(3) That _____ has no legal
(name)
excuse or justification for failing to comply with said order.

(4) That an Order to Show Cause should be issued against

(name)
_____, commanding him/her to appear and show cause,
if any he/she may have, why he/she should not be held in contempt of Court.

So AFFIRMED this ____ day of _____, 20 ____.

(Petitioner)

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER TO SHOW CAUSE

For: The Sheriff of _____ County

To : _____
(name)

(address)

You are ORDERED to appear before this Court on the ____ day of _____, 20____, at _____ o'clock ____ .M. to then and there show cause, if any you may have, why you should not be held in contempt of Court for failing to comply with the orders of Court entered the ____ day of _____, 20____. In the event you should fail to appear, attachment may issue for your person, and you may be taken into custody by law enforcement officers and brought before this Court at its earliest convenience.

So ORDERED this ____ day of _____, 20____.

Judge

APPEALS

- I. Appeals may be taken as provided by law. IC 31-32-15-1. If a child is alleged to be a delinquent child, the procedures governing criminal trials apply in all matters not covered by the juvenile law. IC 31-32-1-1.

A juvenile adjudicated a delinquent does not have a right to a stay of execution or bail pending appeal.

In Re Pisello, 293 N.E.2d 228 (Ind.Ct.App. 1973).

In Re Ort, 407 N.E.2d 1162 at 1164 (Ind.Ct. App. 1980).

- A. An order granting waiver of juvenile jurisdiction is appealable, but there is no right to an immediate appeal. An appeal from a waiver order, valid upon its face, must abate pending final determination of criminal prosecution authorized by the waiver.

Snellgrove v. Porter Circuit Court, 386 N.E.2d 680 at 681 (Ind. 1979).

1. However, there is authority that the juvenile may petition for an interlocutory appeal pursuant to Ind. Appellate Rule 4(B)(6), to obtain a review of the waiver order.

In Re Tacy, 427 N.E.2d 919 (Ind.Ct.App. 1981).

Soward v. State, 606 N.E.2d 885 (Ind.Ct.App. 1993).

- B. A juvenile in a delinquency case may file an appeal or file a motion to correct error. The dispositional decree is analogous to a sentencing in a criminal case.

N.J.R. v. State, 439 N.E.2d 725 (Ind.Ct.App. 1982);

See also **In the Matter of M.R., W.D., and C.J.**, 452 N.E.2d 1085 (Ind.Ct.App. 1983).

- C. Post-conviction relief remedies do not apply to juveniles.

Jordan v. State, 512 N.E.2d 407 (Ind. 1987), *reh. denied*, 516 N.E.2d 1054.

- D. Indiana Trial Rule 60(B) motion is available to challenge an adjudication of delinquency or to challenge the rehabilitative action ordered, or to raise a claim of ineffective assistance of counsel.

D.D.J. v. State, 640 N.E.2d 768 (Ind.Ct.App. 1995).

C.B. v. State, 553 N.E.2d 488 (Ind.Ct.App. 1990).

Perkins v. State, 718 N.E.2d 790 (Ind.Ct.App. 1999)

MODIFICATION OF DISPOSITIONAL ORDERS

I. STATUTORY AUTHORITY FOR MODIFICATION:

IC 31-37-22-1 through IC 31-37-22-8

II. PROCEDURE FOR MODIFICATION OF DISPOSITIONAL DECREE

A. PERSONS WHO MAY FILE PETITION TO MODIFY:

While the juvenile court retains jurisdiction under IC 31-30-2-1, the juvenile court may modify any dispositional decree upon the motion of:

1. court's own motion
2. child
3. child's parent, guardian, custodian or guardian ad litem
4. probation officer
5. caseworker
6. prosecuting attorney
7. attorney for county office of family and children
8. any person providing services to the child or child's parent, guardian or custodian under decree of the court.

IC 31-37-22-1

[Use D-14.02, **Verified Petition for Modification of Dispositional Decree**, unless modification is ordered by the court of its own motion.]

B. COURT'S JURISDICTION TO MODIFY:

1. The juvenile court's jurisdiction over a delinquent child and the child's parent, guardian, or custodian continues until:
 - a. age 21, unless the court discharges the child, and the parent, guardian or custodian at an earlier time; or
 - b. guardianship is awarded to the Department of Corrections.

*However, see H.1. of this Chapter regarding reasserting jurisdiction.

IC 31-30-2-1

2. If the child has been in the custody of the Department of Corrections, under the original dispositional decree, the juvenile court may not award guardianship of the child back to the Department of Corrections unless the court holds a hearing and finds that the child has violated a modified dispositional decree.

IC 31-37-22-2

C. EMERGENCY CHANGE IN CHILD'S RESIDENCE

1. If the petitioner requests an emergency change in the child's residence, the court may issue a temporary order. However, the court shall then give notice to the persons affected and shall hold a hearing on the question if requested. If the petitioner requests any other modification,

the court shall give notice to those persons affected and may hold a hearing on the question.

IC 31-37-22-3

[Use D-14.03: Order for Hearing and Notice on Modification Petition, including Temporary Order

2. If a hearing is required, IC 31-37-17-1 *et seq.* governs the preparation and use of a modification report. This report shall be prepared if the state or any person other than the child or parent, guardian, guardian ad litem or custodian is requesting the modification.

IC 31-37-22-4

3. No change in detention or custody should be ordered, without notice, upon filing of a modification probation violation petition unless the petition alleges an emergency. In deciding whether to issue a temporary order, without notice, for emergency detention or custody, the court may consider the criteria for detention normally considered in the detention hearing under IC 31-37-6-6.

In re L.J.M., 473 N.E.2d 637, 640 (Ind. Ct. App. 1985)

D. MODIFICATION – PLACEMENT OF RUNAWAYS

1. IF:
 - a) a child is placed in a shelter care facility or other residence by court order for a delinquent act under IC 31-37-2-2 (runaway);
 - b) the child received a written warning of consequences of violation of placement at the hearing;
 - c) the warning is reflected in the record;
 - d) the child is not held in a juvenile detention facility for more than 24 hours (excluding Saturdays, Sundays and legal holidays) before the hearing where the violation of the placement is determined;

AND

- e) the child's mental and physical condition may be endangered if the child is not placed in a secure facility;

the juvenile court may modify the dispositional order and place the child in a public or private facility for children.

IC 31-37-22-5

2. Juvenile court committed error by committing juvenile to Department of Corrections after the court found that the juvenile had violated his probation by running away from home, because, court failed to comply with IC 31-37-22-5 which requires a written warning of consequences of a violation of placement. **P.F.B., Jr. v. State**, 751 N.E.2d 341 (Ind. Ct. App. 2001) *reh. denied*, 759 N.E.2d 1191 (Ind. Ct. App. 2001)

E. MODIFICATION - PLACEMENT OF TRUANTS:

1. IF:

- a) the child fails to comply with IC 20-8.1-3 concerning compulsory school attendance as part of the dispositional order for a delinquent act under IC 31-37-2-3 (compulsory school attendance);
- b) the child received a written warning of consequence of violation of the court order;
- c) the warning was reflected in the record at the hearing;
- d) the child is not held in a juvenile detention facility for more than 24 hours (excluding Saturdays, Sundays, and legal holidays) before the hearing where the violation of compulsory school laws is determined;

AND

- e) the child's mental and physical condition may be endangered if the child is not placed in a secure facility;
- the juvenile court may modify its dispositional order and place the child in a public or private facility for children as listed in IC 31-37-22-7.

IC 31-37-22-6

2. A juvenile cannot be committed to Department of Corrections for violation of probation for failing to attend school following a suspension or expulsion; absence from school due to suspension or expulsion does not violate the compulsory school attendance laws.

In re A.M.R. v. State, 741 N.E.2d 727 (Ind. Ct. App. 2000)

3. I.C. 31-37-22-6 permits a child already adjudicated a truant to be held in a secure detention facility for a maximum of 24 hours prior to a fact-finding hearing on the allegation that the child violated probation for repeat truancy. If the child, however, is held in a secure facility for more than 24 hours prior to the fact-finding hearing, the juvenile court loses the option of ordering detention of the child in a secure facility as part of the modified dispositional order. **R.A. v. State**, 770 N.E.2d 376 (Ind. Ct. App. 2002).

F. PLACEMENT ALTERNATIVES FOR RUNAWAYS AND TRUANTS:

1. If a court modifies its dispositional order pursuant to IC 31-37-22-5 or IC 31-37-22-6, the court may order the child placed as follows:
- a) in a nonlocal, secure, licensed private facility;
 - b) in a local, secure, licensed private facility;
 - c) in a local, secure, public facility;
 - d) in a local alternative facility approved by the court;

OR

- e) as a ward of the Department of Corrections for housing in any correctional facility for children. (These truants and runaways may only be placed with other types of delinquent children after the Department of Corrections has determined that other housing is unavailable.)

IC 31-37-22-7

- 2. A child placed in a local secure public facility or an approved local alternative facility may be placed for a maximum of 30 days.

IC 31-37-22-7(b)(1)

- 3. The court shall order specific treatment for the child designed to eliminate the child's disobedience of the court's order of placement.

IC 31-37-22-7(b)(2)

- 4. The court shall retain jurisdiction over placement under this section and must review placement every 3 months to determine if continued placement in a secure facility is appropriate.

IC 31-37-22-7(c)

- 5. A local alternative facility seeking court approval shall comply with IC 31-37-22-8.

G. MANDATORY REVIEW

NOTE: The following recites the requirements of the Indiana Code. However, the Benchbook Committee notes that the federal Adoption and Safe Families Act of 1997 and regulations require periodic review and permanency hearings for children that are placed that are IV-E eligible. The better course is to conduct reviews at 3 -6 month intervals to insure compliance. See CHINS Benchbook for further information.

- 1. Twelve Month Review:

- a) Every 12 months after the date of the original dispositional decree or every 12 months after a delinquent child was removed from his parent, guardian, or custodian, whichever occurs first or more often if ordered by the court, the court shall hold a formal hearing.

[Use D-14.04, **Notice of Hearing on Periodic Review of (or Petition to Modify) Dispositional Order**]

- b) The court shall determine whether the dispositional decree should be modified and whether the present placement is in the best interest of the child. The court in making its determination, may consider the following:

- 1) the services that have been provided or offered to a parent, guardian, or custodian to facilitate a reunion;
- 2) the extent to which the parent, guardian, or custodian has enhanced the ability to fulfill parental obligations;
- 3) the extent to which the parent, guardian, or custodian has visited the child, including the reasons for infrequent visitation;
- 4) the extent to which the parent, guardian or custodian has cooperated with the probation department;
- 5) the child's recovery from any injuries suffered before removal;
- 6) whether any additional services are required for the child or his parent, guardian, or custodian and, if so, the nature of those services;

AND

- 7) The extent to which the child has been rehabilitated.

IC 31-37-20-2

[Use D-14.05: Order on Periodic Twelve (12) Month Review Hearing]

2. Eighteen Month Review:

- a) Every 18 months after the date of the original dispositional decree or every 18 months after a delinquent child was removed from the child's parent, guardian, or custodian, whichever comes first, or more often if ordered by the juvenile court, the court shall hold a formal hearing on the question of continued jurisdiction.

[Use D-14.04: Notice of Hearing on Periodic Review of (or Petition to Modify) Dispositional Order]

b) The state must show that jurisdiction should continue by proving that the objectives of the dispositional decree have not been accomplished and that a continuation of the decree with or without any modifications has a probability of success. If the state does not sustain its burden for continued jurisdiction, the court may:

- 1) authorize a petition for termination of the parent-child relationship;

OR

- 2) discharge the child or the child's parent, guardian or custodian.

IC 31-37-20-3

3. Before the case review hearings specified by IC 31-37-20-2 (12 month review) or IC 37-20-3 (18 month review), the probation department of the county office of family and children shall prepare a report in accordance with

IC 31-37-21 on the progress made in implementing the dispositional decree.
IC 31-37-20-4
[Use D-14.06, **Order on Periodic Eighteen (18) Month Review Hearing**]

H. REINSTATEMENT OF JURISDICTION BY DEPARTMENT OF CORRECTIONS:

1. The Department of Corrections may petition the court to reinstate the court's jurisdiction over the child and the child's parent, guardian, or custodian to modify the court's decree under IC 31-34-23 or IC 31-37-22, or order the child's parent, guardian or custodian to participate in programs operated by or through the Department of Corrections.

IC 31-30-2-4.

2. Upon notification that the child will be released by the Department of Corrections (31-30-2-2 requires such notification within 10 days of release), the court on its own motion, or on petition of the Department of Corrections, can:
 - a) modify the dispositional decree within 30 days of notification;
 - b) order parental participation;

OR

- c) reinstate jurisdiction to effectuate restitution.

IC 31-30-2-1

IC 31-30-2-3

IC 31-30-2-4

IC 31-30-2-5

I. NOTICE:

1. Notice shall be given to all persons affected by the request for modification.

IC 31-37-22-3

2. The modification statute that includes the requirement of notice must be strictly followed.

In re L.J.M., 473 N.E. 2d 637, 640 (Ind. Ct. App. 1985).

3. Written notice specifically setting forth the grounds relied upon for modification is not necessarily required if child had received notice by another method.

S.L.B. v. State, 434 N.E. 2d 155 (Ind. Ct. App. 1982)

[Use D-14.03 **Order for Hearing and Notice on Modification Petition Including Temporary Order**, OR D-14.04: **Notice of Hearing on Periodic Review of (or Petition to Modify) Dispositional Order**]

J. EVIDENCE & HEARING:

1. Burden of proof in a modification hearing is by preponderance of the evidence.

IC 31-37-14-3

2. Any change of the dispositional decree, including change in probation or revocation of probation is a modification of the dispositional order and the modification procedure must be followed.

In re L.J.M., 473 N.E. 2d 637 (Ind. Ct. App. 1985)

3. Unlike courts in adult criminal cases, the juvenile court is not required to suspend a sentence as a prerequisite to imposing probation and with or without probation, the court, as long as it retains jurisdiction, may modify its dispositional decree at any time.

[Use Form 14.07, **Order on Modification Hearing** following the hearing; and Form 14.08, **Modified Dispositional Order** when modifying the dispositional order.]

K. HEARSAY:

1. Hearsay evidence is admissible in original dispositional hearings and modification hearings.
2. A report may be admitted into evidence if the report contains evidence of probative value even if the evidence would otherwise be excluded.

IC 31-37-21-3(a)

In re L.J.M., 473 N.E.2d 637, 643 (Ind. Ct. App. 1985)

L. RIGHT TO APPOINTED COUNSEL: A parent cannot, without the consent of the child, waive the child's right to appointment of counsel in a modification hearing.

In the Matter of G.B. v. State, 715 N.E. 2d 951 (Ind. Ct. App. 1999)

M. CONTEMPT - A juvenile court may not use its inherent contempt power to incarcerate a status offender for the willful violation of a court order, but rather, must follow the modification procedures when it modifies a dispositional decree and orders the repeat status offender's commitment.

B.L. v. State, 688 N.E.2d 1311 (Ind. Ct. App. 1997).

N. PRIVILEGES – a privilege does not exist between a probation officer and the child. Accordingly, any statements made to the probation officer are not confidential and Miranda warnings are required prior to the probation officer questioning the juvenile regarding incriminating acts.

In re L.J.M., 473 N.E.2d 637 (Ind. Ct. App. 1985)

O. FINANCIAL RESPONSIBILITY OF PARENTS:

1. Generally: IC 31-40-1-1 through IC 31-40-1-7 and IC 31-40-2-1.
2. The burden of proof is by preponderance of the evidence.
L.J.F. v Lake County Department of Public Welfare, 484 N.E.2d 40 (Ind. Ct. App. 1985)

P. LEGAL SETTLEMENT

1. The juvenile court shall make a finding of legal settlement of the child for school purposes in a modification order when the court places a child or changes the placement of a child; this affects transfer tuition fees.
IC 31-37-19-26
IC 31-37-20-6
2. The juvenile court shall, within 10 days of placement, comply with the reporting requirements under IC 20-8.1-6.1-1 through 5.5.

III. REPORTS

- A. Information required in report for modification hearing is the same as for the original dispositional hearing:
IC 31-37-17-1
IC 31-37-17-3
IC 31-37-17-6.1
- B. PROGRESS REPORTS:
 1. Before a review hearing pursuant to IC 31-37-20-2 or 31-37-20-3, the probation department or the county office of family and children shall prepare a report on the progress made in implementing the dispositional decree, including the progress made in rehabilitating the child, preventing placement out-of-home, or reuniting the family.
IC 31-37-20-4
IC 31-37-21-1
 2. The foster parent shall be consulted regarding the child's progress if in foster care.
IC 31-37-21-1(b)
 3. If modification of the dispositional decree is recommended, the probation department or the county office of family and children shall prepare a modification report containing the information required by IC 31-37-17 (Predispositional Report) and request a formal hearing.
IC 31-37-21-1(C)
- C. MODIFICATION REPORT:
 1. If a hearing is required, IC 31-37-17 governs the preparation and use of a modification report. The report shall be prepared if the state or any person other than the child or the child's parent,

guardian, or guardian ad litem, or custodian is requesting the modification.

IC 31-37-22-4

2. If a child qualifies for Title IV-E reimbursement, additional review hearings and reasonable efforts findings must be made to enable the county to receive reimbursement for those placements.

Note: The Benchbook Committee has not approved a particular form of report for a modification hearing. It should be left to the individual reporting agency and the needs of the local court.

IV. ADDITIONAL NOTES AND CASES

- A. Correcting information in juvenile records:

IC 31-39-7-1, IC 31-39-7-2

- B. The juvenile court did not have authority to grant child's petition to modify the dispositional order to require the School Corporation to admit the child as a student. The court, however, did have authority to grant the probation department's motion for injunctive relief to prevent the School Corporation from expelling the child from school.

West Clark Community School v. H.L.K., 690 N.E.2d 238 (Ind. 1997)

- C. A juvenile court may make a recommendation to the Department of Corrections regarding the length of period a child should be detained. A juvenile court's recommendation to the Department of Corrections that a child be detained for a fixed period of time, however, has no binding effect on the actual time detained. When the juvenile court awards guardianship or wardship of a delinquent child, the court loses its jurisdiction over the delinquent

In Re J.A.W., 504 N.E. 2d 334 (Ind. Ct. App. 1987)

- D. A juvenile court is not required to enter a dispositional decree or modified dispositional order that is the least restrictive pursuant to IC 31-34-19-6 if it is not in the best interest of the child. Although options may be available other than commitment to an institution, it may be appropriate to commit a child to a public institution if it is in the best interest of the child and of society.

A.D. v. State, 736 N.E.2d 1274 (Ind. Ct. App. 2000). See also, **E.M.W. v. State**, 762 N.E. 2d 1283 (Ind.Ct.App. 2002)

- E. TERMINATION OF PROBATION:

Note: The Benchbook committee believes that probation expires at a time certain or by operation of law. However, some courts may prefer to use D-14.09, Motion to Terminate Probation, for case management purposes.

STATE OF INDIANA

COURT

In The Matter Of _____

A Delinquent Child

Case No. _____

VERIFIED PETITION FOR MODIFICATION OF DISPOSITIONAL DECREE

Your petitioner alleges and says:

1. The capacity in which your petitioner files this petition is:

 [here set forth capacity of petitioner as required by IC 31-37-22-1]

2. That on the _____ day of _____, 20____, the Court entered a dispositional decree in this cause wherein

 [here set forth particulars of dispositional decree]

3. Your petitioner further alleges and says:

 [here set forth details of probation violation or other facts justifying modification]

4. The current legal settlement of the child is _____.

5. Your petitioner believes that the following modification is necessary and appropriate:

 [here set forth particulars of requested change or additional information].

6. Referral (has) (has not) been made to the local coordinating committee. (If applicable)

7. That a modification report (is) (is not) (being prepared for filing) (filed herewith).

8. Your petitioner (does) (does not) request an emergency change in the child's residence. Your petitioner further alleges and says:

9. The following temporary order is requested:

WHEREFORE the petitioner requests the following relief:

1. to schedule a hearing for this petition ;
2. that notice be given to all affected persons, including said child, his parent, guardian or custodian;
3. the modification of said dispositional decree as requested herein; and
4. for all further and proper relief, including the issuance of a temporary order, if an emergency has been alleged herein.

I affirm under the penalties of perjury that the foregoing representations and statements are true.

Dated: _____

Petitioner

STATE OF INDIANA

COURTIn The Matter Of _____
A Delinquent Child

Case No. _____

**ORDER FOR HEARING AND NOTICE ON MODIFICATION PETITION
INCLUDING TEMPORARY ORDER**

Comes now _____ and files a Petition for Modification of the Dispositional Decree which petition is now considered by the Court and the Court having considered same, and being duly advised in the premises, now orders as follows:

1. The Court sets said petition for hearing on the _____ day of _____, 20____, at _____ o'clock ____M.
2. The Court orders the Clerk to issue notice of hearing to be served upon said child and the following parent, guardian or custodian:
_____.

If the child is to be detained pending hearing, include the following:

3. (*Select applicable paragraphs*) The petitioner having requested an emergency change in the child's residence, and the Court finding that the following grounds for detention exist:
 - () the child is unlikely to appear before the juvenile court for subsequent proceedings;
 - () the child has committed an act that would be murder or a Class A or Class B felony if committed by an adult;
 - () detention is essential to protect the child or the community;
 - () the parent, guardian, or custodian cannot be located or is unable or unwilling to take custody of the child; or
 - () the child has a reasonable basis for requesting that he/she not be released.
 - () Other:

_____.

The following temporary order is therefore entered:

(Indicate place of detention and reasonable efforts, if any, to prevent removal.)

Dated: _____

Judge

STATE OF INDIANA

_____ COURT

In The Matter Of _____
A Delinquent Child

Case No. _____

**NOTICE OF HEARING ON PERIODIC REVIEW
OF (OR PETITION TO MODIFY) DISPOSITIONAL ORDER**

TO: _____

You are hereby notified that a hearing has been scheduled before the above Court on the _____ day of _____, 20__ at _____ o'clock _____. M., or as soon thereafter as the matter may be heard, in regards to the following:

- () periodic [twelve (12) month] review of dispositional decree;
- () periodic [eighteen (18) month] review of dispositional decree;
- () on the motion of the Court to consider modification of the decree; or
- () on the Petition of _____ to modify the dispositional decree.

(name and capacity)

At the time of the hearing the Court will review the present placement of the child, whether it is appropriate and in the best interests of the child, circumstances concerning the status of the parents (guardian) (custodian) in reference to the child, whether additional services are required and the extent to which the child has been rehabilitated, and if an eighteen (18) months hearing, whether the Court should continue jurisdiction in this matter. Such hearing will be held in your absence should you fail to appear. Any report available to the court for such hearing is available to you or your attorney prior to the hearing upon your request, except to the extent that the Court has determined certain portions of the contents are confidential, in which case a factual summary may be made available.

The Sheriff of _____ County is hereby ordered and directed to serve a true and complete copy of the above and foregoing Notice of Hearing upon the person(s) named above and make due return thereof.

Dated: _____

Deputy/Clerk of the Court

STATE OF INDIANA

COURT

In The Matter Of _____
 A Child Alleged to be a Delinquent Child

Case No. _____

**ORDER ON PERIODIC [TWELVE (12) MONTH] REVIEW HEARING
 [31-37-20-2]**

The State of Indiana appears by _____, (Deputy
 /Prosecuting Attorney) (Attorney for Office of Family and Children). The child,
 _____, appears in person and with/without counsel,
 _____. The parent(s) (guardian) (custodian) appear(s) in
 person. Also, (Probation Officer) (Intake Officer) _____
 appears.

This case now comes before the court for a Periodic Review Hearing pursuant to
 the provisions of IC 31-37-20-2.

The Court, after reviewing a report of the (probation department) (Office of
 Family and Children) on the progress made in implementing the dispositional decree,
 including the progress made in reuniting the family, and hearing statements and evidence
 presented to the Court at this hearing, and being duly advised in the premises, now finds
 as follows:

1. The dispositional decree was issued by the court on _____ day of _____,
 20__, and the child was ordered placed _____ on the
 ____ day of _____, 20__.
2. Here include findings of fact, including reasonable efforts, in accordance with
 IC 31-37-20-2. (See G. 1. B of this Chapter.)

The legal settlement of the child is _____ The _____ Office
 of Family and Children shall provide the notice required pursuant to IC 20-8.1-6.1-5.5.

IT IS THEREFORE ADJUDGED AND ORDERED BY THE COURT AS
 FOLLOWS:

[ALTERNATIVE A]

That no change be made in the dispositional decree and that the dispositional decree theretofore entered in this case be continued in full force and effect and that the next periodic review hearing be held on the _____ day of _____, 20____ at _____ o'clock _____.M.

STATE OF INDIANA

____ COURT

In The Matter Of _____
 A Child Alleged to be a Delinquent Child

Case No. _____

**ORDER ON PERIODIC EIGHTEEN (18)
 MONTH REVIEW HEARING
 [31-37-20-3]**

The State of Indiana appears by _____, (Deputy /Prosecuting Attorney) (Attorney for Office of Family and Children). The child, _____, appears in person and with/without counsel, _____. The parent(s) (guardian) (custodian) appear(s) in person. Also, (Probation Officer) (Intake Officer) _____ appears.

This case now comes before the court for a Mandatory Review Hearing pursuant to the provisions of IC 31-37-20-3.

The Court, after reviewing a report of the (probation department) (Office of Family and Children) on the progress made in implementing the dispositional decree, including the progress made in reuniting the family, and hearing statements and evidence presented to the Court at this hearing, and being duly advised in the premises, now finds as follows:

3. The dispositional decree was issued by the court on _____ day of _____, 20__, and the child was ordered placed _____ on the ____ day of _____, 20__.
4. Here include findings of fact, including reasonable efforts, in accordance with IC 31-37-20-2 and IC 31-37-20-3 (See G. 1 B and 2 of this Chapter.)

The legal settlement of the child is _____. The _____ Office of Family and Children shall provide the notice required pursuant to IC 20-8.1-6.1-5.5.

IT IS THEREFORE ADJUDGED AND ORDERED BY THE COURT AS
 FOLLOWS:

[ALTERNATIVE A]

That the jurisdiction is ordered continued. That no change be made in the dispositional

decree and that the dispositional decree heretofore entered in this case be continued in full force and effect and that the next periodic review hearing be held on the ____ day of _____, 20__ at _____ o'clock ____M.

[ALTERNATIVE B]

That the jurisdiction is ordered continued however, modification of the dispositional decree is ordered as follows: (here set forth details of modification – use Form _____ for disposition decree alternatives)

[ALTERNATIVE C]

The state has failed to meet its burden for continued jurisdiction and the court hereby

- a. authorizes a petition for the termination of the parent child relationship or,
- b. discharges the child or the child's parent, guardian, or custodian from the jurisdiction of the court.

So ordered this ____ day of _____, 20__.

Judge

STATE OF INDIANA

COURT

In The Matter Of _____
A Delinquent Child

Case No. _____

ORDER ON MODIFICATION HEARING

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child,
_____, appears in person and with/without counsel,
_____. The parent(s) (guardian) (custodian)
_____ appear (s) in person. Also, (Probation Officer)
(Intake Officer) _____ appears.

The Court convenes for a Fact Finding Hearing on the Petition to Modify.

The Court FINDS and ORDERS as follows:

[CHOOSE #A OR #B OR #C]

ALTERNATIVE A

[if the child admits to the allegations in the Petition to Modify, choose the following:]

1. The child admits to the allegations in the Petition to Modify.

The Court now determines that no promises or threats were made to the child, parent/guardian/custodian to obtain the admission, that the child is not under the influence of any substance, and that the child and the parent/guardian/custodian understand the admission and waive(s) their legal and constitutional rights previously explained.

2. The Court finds an adequate factual basis and grants the Petition to Modify.

ALTERNATIVE B

[If the child does not admit and evidence is submitted, choose the following]

1. The Court finds that the State has proven by a preponderance of the evidence that good cause exists to modify the Court's prior Dispositional Order.

2. The Court finds good cause to grant the modification
3. The Probation Officer is ordered to prepare a Predispositional Report and the Court sets this for a Dispositonal Hearing on the _____ day of _____, 20__ and _____ o'clock __M.

The Court considers the issue of detention and finds that the child should be detained for the following reasons:

- () the child is unlikely to appear for subsequent proceedings;
- () detention is essential to protect the child or the community;
- () the child has a reasonable basis for requesting that he not be released;
- () return of the child to the home is or would be contrary to the best interests and welfare of the child and would be harmful to the safety or health of the child;
- () the parent, guardian or custodian cannot be located or is unable or unwilling to take custody of the child and the Court orders said child detained.

[If the court proceeds to disposition, incorporate Forms on Modification of Disposition Order and Dispositional Order.]

ALTERNATIVE C

[If the child does not admit and evidence is submitted, choose the following]

1. The Court finds that the State has not proven by a preponderance of the evidence that good cause exists to modify the Court's prior Dispositional Order.
2. The prior disposition is continued without modification.
- 3.

So ordered this _____ day of _____, 20__.

Judge

STATE OF INDIANA

COURTIn the Matter Of _____
A Delinquent Child

Case No. _____

MODIFIED DISPOSITIONAL ORDER

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child,
_____, appears in person and with/without counsel,
_____. The parent(s) (guardian) (custodian)
_____ appear(s) in person. Also, (Probation Officer)
(Intake Officer) _____ appears.

The Court proceeds with the Disposition Modification Hearing upon finding good cause to modify its prior Dispositional Order.

The Court finds as follows:

1. The statements in the Probation Officer's Report and all attachments are adopted as findings, including any and all statements of reasonable efforts to provide services, and are incorporated by reference herein.
2. The child's legal settlement is _____.
3. The Court finds:

[here set forth details of probation violation or other facts justifying modification]

4. The court finds its Disposition is the least restrictive alternative to insure the child's welfare and rehabilitation and the safety and welfare of the community.

IT IS THEREFORE ORDERED:

[here set forth specific dispositional orders.

So ordered this _____ day of _____, 20 ____.

Judge

STATE OF INDIANA

_____ COURT

In The Matter Of _____
A Delinquent Child

Case No. _____

MOTION TO TERMINATE PROBATION

Comes now _____, Probation Officer of the
_____ County _____ Court, and advises the
Court that _____, was found to be a delinquent child and placed on
formal probation by the Court on the _____, 20____. Your petitioner
now requests the Court to release said child from probation for the reason that said child
has: (Select the appropriate reason)

- ☐ reached the aged of eighteen (18) years;
- ☐ moved out of the jurisdiction of the Court;
- ☐ whereabouts unknown;
- ☐ satisfactorily completed terms of probation;
- ☐ further supervision is not advised;
- ☐ unsatisfactorily completed terms of probation; or
- ☐ other (explain): _____

Dated: _____

Petitioner

ORDER

Motion sustained. Said child is now released from probation and jurisdiction in
this matter is terminated.

So ORDERED this _____ day of _____, 20____.

Judge

PUBLIC ACCESS TO HEARINGS AND RECORDS IN JUVENILE DELINQUENCY PROCEEDINGS

I. Public Access to Hearings:

A. Open to the Public by Statute:

1. Adults charged with contempt or criminal charges: all proceedings in the juvenile court involving adults charged with the following shall be tried in open Court. I.C. 31-32-6-1.
 - a) Contempt of court; or
 - b) Criminal charges;
2. Child charged with an act that would be murder or felony if committed by an adult.
 - a) A delinquency proceeding is open to the public whenever a petition alleging the child had committed an act that would be murder or a felony if committed by an adult. I.C. 31-32-6-3. (See I.C. 31-32-6-4 for procedure to close what would otherwise be an open juvenile proceeding).

B. Open to the public by court discretion.

1. Child charged with an act that would be a misdemeanor if committed by an adult I.C. 31-32-6-2.
2. Child charged with a status offense. I.C. 31-32-6-2.

C. Closing of proceeding or part thereof that would otherwise be open to the public.

1. To protect child witness or child victim; Upon motion of the prosecuting attorney, the child, or the child's guardian Ad Litem, counsel, parent, guardian, or custodian, the court may issue an order closing a proceeding during the testimony of a child witness or a child victim if the court finds that:
 - a) An allegation or a defense involves matters of a sexual nature; and
 - b) Closing the proceeding is necessary to protect the welfare of a

child witness or a child victim. I.C. 31-32-6-4

2. Factors to consider in closing a proceeding. In determining whether closing a proceeding is necessary to protect the welfare of a child witness or child victim, the court shall consider the following:

- a) The nature of the allegation or defense.
- b) The age of a child witness or victim.
- c) The psychological maturity of a child witness or child victim.
- d) The desire of a child witness or child victim to testify in a proceeding closed to the public. I.C. 31-32-6-5.

3. Required order closing proceeding to protect child witness or child victim.

If a proceeding is closed to the public under I.C. 31-32-6-4 the juvenile court shall:

- a) Make findings of fact concerning the closure of the proceeding; and
- b) Place the exclusion order in the file of the proceedings.

II. Public Access to Records of Juvenile Court: I.C. 31-39-1-1 This statute applies to all records of the juvenile court except: (1) records involving an adult charged with a crime or criminal contempt of court; and (2) records involving a pregnant minor or her physician seeking a waiver of the requirement for written parental consent before performing an abortion on an unemancipated minor which is governed by other statutory provisions. Records only include: chronological case summaries, index entries, summonses, warrants, petitions, orders, motions and decrees. I.C. 31-39-2-1.

A. Basic rule: All records of the juvenile court are confidential, and are available only in accordance with I.C. 31-39-2. [NOTE: The basic rule is confidentiality, with numerous specific exceptions I.C. 31-39-3-3 permits public access to records relating to any child in secure detention.]

B. Persons authorized access, without a Court Order: Certain records are available to the following persons without an order of the Court: [Records, in this context, include: Child's name and age, the nature of the offense, Chronological Case Summaries, index entries, summonses, warrants, petitions, orders, motions (other than related to psychological evaluations, child abuse and neglect), and decrees. Once the child is

adjudicated delinquent, then the child's photograph may also be released]. I.C. 31-39-2-8.

1. The judge or any authorized staff member; [I.C. 31-39-2-2];
2. Any party and his/her attorney [with certain exceptions explained in I.C. 31-39-2-3];
3. A criminal court judge or authorized staff member, if the record is to be used in a pre-sentence investigation in that court [I.C. 31-39-2-4];
4. The prosecutor or any authorized staff member [I.C. 31-39-2-5];
5. The attorney, or any authorized staff member, of the county or state office or division of family and children, or the department of correction [I.C. 31-39-2-6];
6. The parents of a child when the custody or support of that child is in issue in a divorce/modification proceeding [I.C. 31-39-2-7];
7. The public, whenever a petition has been filed alleging that a child is delinquent because of alleged act(s) that:
 - (a) Would be murder or a felony if committed by an adult; or
 - (b) Are an aggregate of two (2) unrelated acts that would be misdemeanors, and if the child was at least twelve (12) years of age when the acts were committed; or
 - (c) Are an aggregate of five (5) unrelated acts that would be misdemeanors, if the child was less than twelve (12) years of age when the acts were committed, [31-39-2-8].

C. Access by persons and agencies, with a Court Order: Various persons and agencies may be granted access to juvenile records with Court permission.

1. A person providing services to the child or the child's family, [I.C. 31-39-2-9].

Note: The Benchbook Committee recognizes that some counties apply this provision to authorize the release of specific information to schools.

2. Persons having a legitimate interest in the work of the court or in a particular case [I.C. 31-39-2-10].
3. A person involved in a legitimate research activity [I.C. 31-39-2-11].
NOTE: This requires certain written agreements as to use of the information between the court and the requestor.
4. Any party to a criminal or juvenile delinquency proceeding if the information may be used to impeach the person [to whom the record applies] as a witness, or to discredit the person's reputation if the person places it in issue. [I.C. 31-39-2-12]
5. the victim of a delinquent act, or the victim's family, if the information may be used in a civil action against the child who committed the act, or

against the child's parent. [I.C. 31-39-2-13]

NOTE: Whenever the court grants access to its records, the court must place a copy of the access order in the file of each person to whose record the order applies. *Caveat*: only one general access order or agreement pertaining to legitimate research activity need be prepared, and should be placed in a miscellaneous order file.

- D. Waiver: Only the person (who must be 18 years old or older at the time of waiver) may waive the restrictions on access to their records. I.C. 31-39-2-15. [NOTE: the parent, guardian or attorney for the child is not permitted to waive restrictions on the child's records]. The waiver must be submitted to the court in writing, and must state the terms and limitations (if any) of the person's waiver.
- E. Correction of records: The person on whom records are maintained may request the court to modify any information that person believes is incorrect or misleading. I.C. 31-39-71.

III. Records of law enforcement agencies: I.C. 31-39-4 sets forth the restrictions on access to law enforcement records involving delinquents and children in need of services. Many of the provisions of this statute are similar to the restrictions on access on court records. It is important to note, however, that access to law enforcement agency records is controlled (where applicable) by the head of the law enforcement agency. The juvenile court judge may not exercise any jurisdiction or control over: (1) the records kept and maintained by law enforcement agencies relating to juveniles; and (2) the discretion granted to the head of the law enforcement agency to release or grant access to those records. I.C. 31-39-4-14.

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child.

**ORDER CLOSING PUBLIC ACCESS TO JUVENILE PROCEEDING
DURING TESTIMONY OF CHILD WITNESS/VICTIM
I.C. 31-32-6-4**

Comes now _____ the [Prosecuting Attorney] [Child] [Child's
Guardian Ad Litem] [Child's Parent/Guardian/Custodian] having filed a motion requesting an
Order closing the juvenile proceeding in this case during the testimony of a child witness or
victim:

The Court having considered the matters presented in support of said motion now finds:

- (1) That an allegation or a defense in these delinquency proceedings involves
matters of a sexual nature; AND
- (2) That closing the proceeding is necessary to protect the welfare of a child
witness or child victim in this case.

In making these findings, the Court has considered the nature of the allegation or defense, the
age of the child witness or child victim, the psychological maturity of the child witness or child
victim, and the desire of the child witness or child victim to testify in a proceeding closed to the
public.

IT IS THEREFORE ORDERED that this juvenile proceeding shall be closed to the public during
the duration of the testimony of the child witness or child victim.

IT IS FURTHER ORDERED that a copy of this exclusion Order shall be placed in the case file
of this proceeding for record.

SO ORDERED this _____ day of _____, 20__.

Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child**ORDER GRANTING ACCESS TO CERTAIN JUVENILE RECORDS**

The _____ [Agency or person] having made a written request for access to the juvenile records of the delinquent child on _____ [date] under the provisions of I.C. 31-34-2 and

The Court having read and considered said request now Orders:

- ☐ Pursuant to I.C. 31-39-2-9, _____, a person providing services to the child or the child's family, shall have access to the following juvenile records in this case: [Here state limitations to access, if any:].
- ☐ Pursuant to I.C. 31-39-2-10, _____, a person having a legitimate interest in the work of the court or in a particular case access to court records, shall have access to the following juvenile records in this case: [Here state limitations to access, if any:].
- ☐ Pursuant to I.C. 31-39-2-11, _____, a person involved in a legitimate research activity, shall have access to this Court's confidential juvenile records. [Here state limitations to access, if any:].

The person having access to the records under this Order is bound by the confidentiality provisions of I.C. 31-39-1-1, and may **not** disclose the contents of these records and may **not** disclose the identity of each person whose records are reviewed.

-OR-

- ☐ Pursuant to I.C. 31-39-2-12, _____, a party to a criminal or juvenile delinquency proceeding, shall have access to the following juvenile records in this case: [Here state limitations to access, if any:].
- ☐ The person(s) having access to the records under this Order is bound by the confidentiality provisions of I.C. 31-6-8-1, and may **not** disclose the contents of

these records, except for the following permitted purposes: (1) to impeach the person as a witness; or (2) to discredit the person's reputation if the person places it in issue.

-OR-

- ☐ Pursuant to I.C. 31-39-1-1, _____, a victim of a delinquent, or a member of the victim's family, shall have access to the following juvenile records in this case: [Here state limitations to access, if any:].

The person(s) having access to the records under this Order is bound by the confidentiality provisions of I.C. 31-39-1-1, and may **not** disclose the contents of these records, except for the following permitted purposes: only if disclosure is necessary to prosecute any civil action.

-OR-

- ☐ Pursuant to I.C. 31-39-2-15, _____, a person eighteen (18) years of age or older has filed a written waiver of the restrictions on access to that person's records, stating therein the terms of the person's waiver: [Here state limitations to access, if any:].

Therefore, the confidential records pertaining to _____, a person eighteen (18) years of age or older, shall be open to public access, with the following limitations: [Here state the limitations requested by the releasing person].

All persons granted access to the confidential records described herein are bound by the terms and limitations of disclosure stated herein. A person who intentionally, knowingly or recklessly discloses confidential records and information in violation of the restrictions of this Order is subject to criminal and civil liability and penalty.

A copy of this access Order shall be placed, by the Clerk of Court, in the file of each person to whose records this Order applies.

SO ORDERED this _____ day of _____, 20____.

Judge

STATE OF INDIANA

COURT

In the Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**ORDER OF PRE-ADJUDICATION SUSPENSION OF LICENSE
IC 31-37-5-7**

On _____, 20____, the State of Indiana filed a Petition Alleging Delinquency against the Child, _____. The State alleges that on _____, 20____, in _____ County, Indiana, the child committed an act that would be an offense under IC 9-30-5 if committed by an adult, namely: (list offense and IC#):

_____.

The Court finds probably cause exists to believe that the child, _____, committed that act that would be an offense under IC 9-30-5.

The Court further finds that the child [did][did not] refuse the chemical test for intoxication offered the child under IC 9-30-6-2.

IT IS THEREFORE ORDERED that, pursuant to IC 31-37-5-7, the driving privileges of the child, _____, are suspended for a period of _____, effective on _____. The parent(s) and child are directed to surrender the child's driver license or permits to the Court, forthwith.

SO ORDERED: _____

Judge

STATE OF INDIANA

COURT

In the Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**ORDER OF REINSTATEMENT OF DRIVING PRIVILEGES
IC 31-37-5-7(B)**

On _____, the Court ordered a pre-adjudication suspension of the driving privileges of the child, _____, for a period of _____, in accordance with IC 31-37-5-7(a).

The Court now orders that the driving privileges of the child, _____, be reinstated under IC 31-37-5-7(b) for the reason(s):

() All allegations of delinquency under IC 9-30-5 have been dismissed and the Prosecuting Attorney affirms that these charges will not be refilled.

() The allegations of delinquency under IC 9-30-5 were found not true by the Court at a fact-finding hearing.

The Court further finds that the child [did][did not] refuse the chemical test for intoxication offered the child under IC 9-30-6-2.

IT IS THEREFORE ORDERED that, pursuant to IC 31-37-5-7(b), the driving privileges of the child, _____, are reinstated effective _____.

The Bureau of Motor Vehicles shall remove any record of the child's license suspension from the BMV record keeping system. The Bureau of Motor Vehicles shall reinstate the child's driving privileges without cost to the child or parents.

SO ORDERED : _____

Judge

INDIANA JUVENILE DETENTION CENTERS

D-16.03

Indiana Judicial Center
115 West Washington Street, Suite 1075
Indianapolis, Indiana 46204-3417

FACILITY	NAME / TITLE	ADDRESS	PHONE / FAX	CAPACITY
Allen County Wood Youth Center	Joseph Brita Superintendent	2929 Wells Street Ft Wayne, IN 46808	(260) 449-7161 (260) 449-4240 F	70 Secure 56 Male & 14 Female
Bartholomew County Youth Services Center	Pamela A. Clark Director	2350 Illinois Street Columbus, IN 47201	(812) 379-1690 (812) 379-1768 F	18 Secure Male & Female 10 Shelter Male & Female
Clark County Juv. Detention Center	Jim Snook Director	609 Meigs Avenue Jeffersonville, IN 47130	(812) 285-6360 (812) 285-6392 F	15 Secure Male & Female
Dearborn County Juv. Detention Center	Laurie Patton Director	219 W. High Street Lawrenceburg, IN 47025	(812) 537-8740 (812) 537-8748 F	20 Secure Male & Female
Delaware County Juv. Detention Center	David Dickerson Director	3412 W. Kilgore Ave. Muncie, IN 47304	(765) 741-4940 (765) 741-4944 F	24 Secure Male & Female
Elkhart County Juv. Detention Center	Susie Nichols Director	114 North 2nd Street Goshen, IN 46526	(574) 534-1312 (574) 535-6626 F	18 Secure Male & Female
Grant County Youth Services Annex	Brenda Chambers Director	532 East 5th Street Marion, IN 46953	(765) 662-9864 (765) 668-6594 F	16 Secure Male Only
Hamilton County Juv. Detention Center	Mitchell Russell Director	18106 Cumberland Rd. Noblesville, IN 46060	(317) 776-9829 (317) 776-9827 F	30 Secure 22 Male & 8 Female
Henry County Youth Center	Earl Dunlap Director	103 W Co. Road 100 N PO Box 469 New Castle, IN 47362	(765) 593-9603 (765) 521-7459 F	30 Secure Male & Female 20 Non-Secure 10 Male & 10 Female
Howard County Robert J. Kinsey Youth Center	Janet Weaver Director	701 S. Berkley Road Kokomo, IN 46901	(765) 457-1408 (765) 454-9990 F	20 Secure 12 Male & 8 Female 16 Shelter Male & Female 24 Residential Male & Female
Jackson County Juv. Detention Center	Lori Rumph Director	150 E. Highway 250 Brownstown, IN	(812) 358-2981 (812) 358-1766 F	28 Secure Male & Female
Johnson County Juv. Detention Center	James Higdon Superintendent	1121 Hospital Road Franklin, IN 46131	(317) 736-3020 (317) 736-3028 F	48 Secure 40 Male & 8 Female
Knox County SW Indiana Regional Youth Center	Charlotte Nesbitt Director	1700 Theobald Lane Vincennes, IN 47591	(812) 886-3000 (812) 886-3010 F (812) 886-3009 F Intake fax	40 Secure Male & Female 72 Residential—Male 10 Independent—Male 10 Transitional—Male
Lake County Juvenile Center	Robert Bennet Superintendent	3000 West 93rd Avenue Crown Point, IN 46307	(219) 769-4664 (219) 769-2963 F	84 Secure Male & Female
LaPorte County Juv. Services Center	Eric Yandt Director	364 South Zigler Road LaPorte, IN 46350	(219) 324-5130 (219) 324-5908 F	12 Secure Male & Female 12 Shelter 8 Male & 4 Female 12 Res. Treatment 8 Male & 4 Female
Madison County Youth Center	Noel G. Williams Superintendent	3420 Mounds Road Anderson, IN 46017	(765) 646-9268 (765) 646-9229 F	36 Secure 31 Male & 5 Female 24 Shelter 12 Male & 12 Female 24 Residential 12 Male & 12 Female 20 Independent 10 Male & 10 female

INDIANA JUVENILE DETENTION CENTERS

FACILITY	NAME / TITLE	ADDRESS	PHONE / FAX	CAPACITY
Marion County Juv. Justice Complex	Damon Ellison Superintendent	2451 N. Keystone Ave. Indianapolis, IN 46218	(317) 924-4841 (317) 924-7508 F	144 Secure Male & Female
Porter County Detention Center	Kenneth Perkins Superintendent	1660 State Road 2 Valparaiso, IN 46383	(219) 465-3520 (219) 465-3623 F	24 Secure Male & Female
St. Joseph County Parkview Juv. Center	Dr. Bruinsma Director Steve Roby Det. Director	1000 S. Michigan Street South Bend, IN 46601	(219) 235-5437 (219) 235-5342 F	90 Secure 72 Male & 18 Female
Vanderburgh County Youth Care Center	Steve Perry Director	727 Chestnut Evansville, IN 47713	(812) 421-3806 (812) 421-3804 F	10 Secure Male Only 8 Non-Secure Male Only
Vigo County Juvenile Center	Lee Ann Riesenbeck Director	1919 Hunt Road Terre Haute, IN 47805	(812) 462-3414 (812) 877-9910 F	17 Secure 11 Male & 6 Female

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